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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE FORMAL  
COMPLAINT OF SPARTAN HOMES  
AND CONSTRUCTION, INC. AGAINST  
FAR WEST WATER AND SEWER, INC.

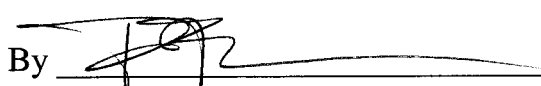
DOCKET NO. WS-03478A-08-0256

Far West Water and Sewer, Inc. ("Company") hereby submits this Notice of Filing Direct Testimony in the above-referenced matter. Specifically filed herewith is the Direct Testimony of Andrew J. Capestro for the Company.

DATED this 20th day of November, 2009.

FENNEMORE CRAIG, P.C.

By

  
Norman D. James  
Patrick J. Black  
3003 North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012

**ORIGINAL** and 13 copies filed  
this 20th day of November, 2009 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Arizona Corporation Commission

**DOCKETED**

NOV 20 2009

DOCKETED BY

1 **COPY** hand-delivered  
2 this 20th day of November, 2009, to:

3 Janice Alward, Chief Counsel  
4 Legal Division  
5 Arizona Corporation Commission  
6 1200 West Washington Street  
7 Phoenix, Arizona 85007

8 Steven M. Olea, Director  
9 Utilities Division  
10 Arizona Corporation Commission  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

13 **COPY** sent via e-mail and U.S. mail  
14 this 20th day of November, 2009, to:

15 Belinda Martin, Administrative Law Judge  
16 Hearings Division  
17 Arizona Corporation Commission  
18 400 West Congress  
19 Tucson, Arizona 85701-1347

20 Jeffrey W. Crockett  
21 Bradley S. Carroll  
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26 Attorneys for Spartan Homes and Construction, Inc.

By: *Maia Sanchez*

2259958.1

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6  
7

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 IN THE MATTER OF THE FORMAL  
10 COMPLAINT OF SPARTAN HOMES  
AND CONSTRUCTION, INC. AGAINST  
11 FAR WEST WATER AND SEWER, INC.

DOCKET NO. WS-03478A-08-0256

12  
13  
14 **DIRECT TESTIMONY OF**

15 **ANDREW J. CAPESTRO**

16 **November 20, 2009**  
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1 **I. INTRODUCTION AND QUALIFICATIONS.**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TELEPHONE**  
3 **NUMBER.**

4 A. Andrew J. Capestro, 12486 Foothills Blvd., Yuma, Arizona 85367. My telephone  
5 number is (928) 342-3344.

6 **Q. WHAT IS YOUR AFFILIATION WITH FAR WEST WATER AND SEWER**  
7 **COMPANY?**

8 A. I am affiliated with Far West Water and Sewer Company ("Far West" or the  
9 "Company") in that my wife, Paula Capestro, and my sister in law, Sandra Braden,  
10 are the officers of the company and its sole stockholders. Until the beginning of  
11 2006, I assisted the company in primarily in legal matters as they arose. I was lead  
12 counsel for company in the criminal complaint brought by the State of Arizona  
13 against the company. That case concluded in the early part of 2006. I was not, and  
14 still am not, on the payroll of company but I do bill for legal services rendered. I  
15 am not on a retainer.

16 **Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES ON BEHALF OF THE**  
17 **COMPANY?**

18 A. Following the conclusion of the criminal matter, I started to take a more active roll  
19 in the day to day operations of the company, in addition to my legal counsel role.  
20 At that time, the company had a director of operations, Dusty Thomas, and a field  
21 manager, Mark Kaveney. By the end of 2006, both Mr. Thomas and Mr. Kaveney  
22 were gone. Since that time, I guess you could say that I am the director of  
23 operations, although I have no title. With the permission of the officers of the  
24 company, I sign all checks issued by the company, I approve most purchase orders  
25 and work orders, I negotiate contracts, I work on the budget, I worked on the  
26 permanent financing approved by the ACC, I am in direct communication with the

1 purveyors supplying equipment for the wastewater treatment plant improvements, I  
2 approve the hiring, promotion and discharge of personnel, I review safety  
3 standards with the company's safety officer, I assist in resolving customer  
4 complaints, I work with county and city officials, and I am in the field almost  
5 every day. Paula Capestro and Sandra Braden are also in the field most days, meet  
6 with the company's personnel, and review and approve action I have either taken  
7 or recommended.

8 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE ARIZONA**  
9 **CORPORATION COMMISSION?**

10 A. Yes, in the Company's current application for interim rates.

11 **II. PURPOSE AND SUMMARY OF TESTIMONY.**

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
13 **PROCEEDING?**

14 A. I am providing testimony in response to allegations made by Mr. Brian  
15 Householder on behalf of his company, Spartan Homes and Construction, Inc.  
16 ("Spartan"). I also address the claims and relief sought by Spartan.

17 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

18 A. Mr. Householder's allegations concerning the existence of a fully executed water  
19 line extension agreement and sewer line extension agreement between Spartan and  
20 Far West is false. Although water and sewer utility service has been extended to  
21 63 lots within Spartan's Sierra Ridge development in the absence of proper line  
22 extension agreements, the circumstances surrounding these extensions demonstrate  
23 that Mr. Householder was working in conjunction with a previous Company  
24 employee to the detriment of Far West and its ratepayers. Furthermore, at a time  
25 when the Company is seeking emergency rate relief from its existing customers  
26 due to financial insolvency, Far West cannot in all good conscience allow a

1 developer to freely connect new customers to the Company's water and sewer  
2 systems based on verbal discussions and oral agreements with a previous  
3 employee, misrepresentations to local county and state officials and a severe lack  
4 of due diligence on the part of Spartan. Requiring developers to pay their  
5 proportionate share of the offsite infrastructure needed to serve their developments  
6 is consistent with both Commission rules and policies.

7 **III. EXTENSION OF UTILITY SERVICE.**

8 **Q. MR. HOUSEHOLDER CLAIMS THAT SPARTAN ENTERED INTO MAIN**  
9 **EXTENSION AGREEMENTS WITH FAR WEST FOR THE EXTENSION**  
10 **OF WATER AND SEWER SERVICE AFTER MEETING WITH MR.**  
11 **KAVENEY SOMETIME IN JANUARY 2005. HOW DO YOU RESPOND?**

12 A. The Company does not have any records to indicate that it entered into main  
13 extension agreements for water and sewer to serve the Sierra Ridge development  
14 sometime in January 2005. In fact, Mr. Householder has not been able to produce  
15 any copies. He claims that Mr. Kaveney told him that he would send copies after  
16 the Commission Staff approved the agreements. *See* Direct Testimony of Brian  
17 Householder ("Householder DT.") at 11-13. However, I find it curious that after  
18 the alleged signing in January 2005, Mr. Householder did not again inquire about  
19 the agreements until April 2006 – nearly 16 months after they had been allegedly  
20 executed. *Id.* at 12-13. Simply put, there are no executed water or sewer line  
21 extension agreements between Far West and Spartan.

22 **Q. BUT SPARTAN HAS INTRODUCED OTHER DOCUMENTS THAT**  
23 **INDICATE FAR WEST INTENDED TO EXTEND WATER AND SEWER**  
24 **SERVICE TO THE SIERRA RIDGE DEVELOPMENT.**

25 A. Those documents were signed by Mr. Kaveney, who was acting outside the scope  
26 of his duties as an employee of Far West. During Mr. Kaveney's deposition, which

1 was taken on November 21, 2008, he admits that he was essentially doing "favors"  
2 for local developers like Mr. Householder in trying to get the Sierra Ridge  
3 subdivision qualified for building permits, despite the fact that there was a lack of  
4 sewer treatment capacity to serve the property. Mr. Kaveney testified that there  
5 was a right way of determining whether the Company had sufficient capacity to  
6 serve a new developer, and that he did not always do it the right way. *See*  
7 Deposition of Mark Kaveney (November 21, 2008)("Kaveney Dep.") at 54-56,  
8 attached hereto as Exhibit 1. In short, Mr. Kaveney admits to providing "favors"  
9 for developers seeking to entitle their properties by representing to the Yuma  
10 County Department of Development Services ("YCDDS") that the Company had  
11 sufficient sewer capacity, when in fact, much of that capacity was already  
12 committed. *Id.* Once the Company's owners were made aware of the way  
13 Mr. Kaveney was conducting business with developers sometime in early 2006,  
14 things immediately changed. For instance, once Mr. Kaveney started dealing with  
15 Paula Capestro, the Company's President, the Company began requiring  
16 developers to pay for offsite sewer capacity needed to serve their development. *Id.*  
17 at 64.

18 **Q. DID MR. KAVENEY PROVIDE ANY SPECIFIC 'FAVORS' TO BRIAN**  
19 **HOUSEHOLDER AND SPARTAN?**

20 A. According to Mr. Kaveney, he provided Mr. Householder and Spartan several  
21 'favors' that put the Company at risk. For instance, despite having written an  
22 internal memorandum on July 2, 2004 regarding the Sierra Ridge development and  
23 problems with sewer treatment capacity at the Palm Shadows wastewater treatment  
24 plant, Mr. Kaveney nevertheless wrote a letter to Mr. Householder stating there  
25 was sufficient capacity in order to meet Yuma County requirements. *Id.* at 117.  
26 Mr. Kaveney provided "all the paperwork, putting my neck out so he

1 [Householder] could get his subdivision started” based on Mr. Householder’s  
2 assurance that no sewage would flow in the immediate future. *Id.* at 118. As  
3 Mr. Kaveney explained, “To put it in black and white, I was fronting  
4 Mr. Householder these documents so he could get his County permits so he could  
5 get himself started so we keep that developmental ball rolling, if you will.” *Id.* at  
6 121.

7 **Q. WHAT HAPPENED AFTER FAR WEST’S OWNERS BECAME AWARE**  
8 **OF HOW THE COMPANY WAS BEING MANAGED BY ITS LOCAL**  
9 **EMPLOYEES?**

10 A. Far West hired Coriolis Engineering to address the situation the Company was  
11 facing in 2006, and mutually agreed to part ways with Mr. Kaveney based on the  
12 new direction the Company was taking in managing both its water and wastewater  
13 operations.

14 **Q. SO YOU CONCEDE THAT PRIOR TO MR. KAVENEY’S DEPARTURE,**  
15 **THE COMPANY WAS NOT DOING THINGS THE ‘RIGHT’ WAY?**

16 A. Unfortunately, yes. The rapid extension of utility services during the early part of  
17 this decade – especially sewer – created a situation where growth placed burdens  
18 on treatment and distribution systems, eventually resulting in a moratorium  
19 imposed by the Arizona Department of Environmental Quality (“ADEQ”) on new  
20 service connections. The Company is making every effort to rectify the situation,  
21 and recently agreed to enter into a settlement agreement with ADEQ addressing  
22 problems created in large part by doing things the “old” way. I do not believe that  
23 continuing to do things the “old” way is beneficial to the Company or its existing  
24 ratepayers, and I will not concede to Mr. Householder’s demands to entitle his  
25 property at the expense of Far West and its customers.  
26



1 Q. BUT HASN'T MR. HOUSEHOLDER AND SPARTAN ALREADY  
2 BENEFITED SINCE FAR WEST IS CURRENTLY PROVIDING WATER  
3 AND SEWER SERVICE TO 63 OF THE 113 LOTS LOCATED WITHIN  
4 THE SIERRA RIDGE DEVELOPMENT (UNIT D)?

5 A. Yes. Based on several forms and documents provided by Mr. Kaveney to  
6 Mr. Householder and YCDDS, Spartan was able to sell 63 lots without paying for  
7 its pro-rata share of off-site facilities required to extend service to the development.  
8 I do not believe that the Company can do anything with respect to these 63  
9 customers except to continue providing water and sewer services despite the  
10 absence of a water and/or sewer main extension agreements. However, it is the  
11 Company's position that Spartan should have to pay its proportionate share of  
12 offsite infrastructure costs required to serve the remaining 50 empty lots, and any  
13 other lots owned by Spartan that Mr. Householder claims should be extended  
14 service without paying for offsite infrastructure.

15 Q. MR. CAPESTRO, CAN'T FAR WEST JUST PAY FOR AND BUILD THE  
16 REQUIRED OFFSITE INFRASTRUCTURE NEEDED TO SERVE THE  
17 DEVELOPMENTS OWNED BY SPARTAN?

18 A. If the Company had any money, perhaps. But this would impose an undue burden  
19 on the Company and existing ratepayers because once those facilities are placed  
20 into rate base, it would affect rates. Furthermore, the Company does not believe it  
21 should expose itself to build-out risk in light of the current economy. If Far West  
22 spent close to \$1 million to build offsite infrastructure for Sierra Ridge, and lots  
23 remain empty and unused, that \$1 million would have been better spent on the  
24 Company's existing system. In light of the Company's pending emergency rate  
25 case application and issues highlighted in the recommended opinion and order, Far  
26 West does not have the financial viability to build infrastructure for developers, let

1 alone finish current improvement projects intended to benefit existing users.

2 **Q. HAS THE ONSITE INFRASTRUCTURE AT SIERRA RIDGE BEEN**  
3 **ACCEPTED BY THE COMPANY?**

4 A. Yes. The onsite infrastructure was accepted by Mr. Kaveney in April 2005. And  
5 the Company is willing to enter into line extension agreements that contain proper  
6 refunding mechanisms on the value of the onsite facilities once the Company  
7 receives details (i.e. specific invoices) from Spartan concerning the value of the  
8 plant, but not at the cost of allowing future interconnections in the absence of  
9 payment for the pro-rata cost of offsite facilities needed to serve these future  
10 connections. I will also add that the facilities built by Spartan has not been  
11 included in either the emergency or permanent rate case application, and therefore  
12 does not currently affect existing ratepayers.

13 **IV. ALLEGED VIOLATION OF COMMISSION RULES**

14 **Q. PLEASE ADDRESS ALLEGATIONS IN THE COMPLAINT**  
15 **CONCERNING VIOLATIONS OF COMMISSION RULES GOVERNING**  
16 **WATER UTILITIES.**

17 A. Certainly. I do not believe the Company has violated A.A.C. R14-2-406(C)(2),  
18 because there is no water main extension agreement between Spartan and Far  
19 West. Absent any agreement, the Company could not have violated A.A.C. R14-2-  
20 406(M), which requires all water main extension agreements to be filed with the  
21 Utilities Division for approval. As I stated earlier, and as expressed during  
22 Mr. Kaveney's deposition, the extension of water service to Spartan's Sierra Ridge  
23 was done without any formal water main extension agreement between the parties.  
24 The extension of water service to the 63 occupied lots was done outside the scope  
25 of the Commission's rules governing main extensions, as well as the Company's  
26 policies regarding such extensions. Therefore, Spartan's allegations concerning the

1 Company's violation of A.A.C. R14-2-406(D) and (E) are incorrect due to the fact  
2 that a water main extension agreement between Spartan and Far West governing  
3 the extension of water service does not exist. Arguably, the Company could be in  
4 violation of A.A.C. R14-2-406(G) because it never entered into a water main  
5 extension agreement despite taking ownership of the onsite facilities constructed by  
6 Spartan. However, Spartan continued to move forward with the Sierra Ridge  
7 development despite the absence of a fully executed and Commission approved  
8 main extension agreement. In addition, when the Company sought to comply with  
9 the rule, Spartan did not provide the information and documents associated with  
10 line extension agreement. Although having learned that the Company intended to  
11 charge Spartan for fees similar to those imposed by local municipalities, Spartan  
12 nonetheless constructed and sold 63 homes after paying only \$25 per lot. Finally,  
13 the requirements set forth in A.A.C. R14-2-406(B) through R14-2-406(M) apply  
14 only to "Each utility entering into a main extension agreement..." Far West cannot  
15 violate a rule or set of rules that contain minimum provisions for main extension  
16 agreements in the *absence* of such an agreement.

17 **Q. PLEASE ADDRESS ALLEGATIONS IN THE COMPLAINT**  
18 **CONCERNING VIOLATIONS OF COMMISSION RULES GOVERNING**  
19 **WASTEWATER UTILITIES.**

20 A. My answers are similar to my responses to Spartan's allegations concerning the  
21 extension of water utility service. Far West cannot violate A.A.C. R14-2-  
22 606(A)(5) in the absence of a wastewater main extension agreement, which I have  
23 already testified does not exist. Furthermore, the rule specifically applies to "all  
24 collection main extension agreements requiring payment by the applicant," and that  
25 such agreement "shall be in writing and signed by each party before the utility  
26 commences construction." Far West has not constructed any facilities for the

1 benefit of Spartan, and refuses to do so unless Spartan agrees to pay its pro-rata  
2 share of costs for facility improvements needed to extend service to any of the  
3 remaining unconnected lots or commercial property. Likewise, Far West cannot  
4 violate A.A.C. R14-2-606(B)(2), which requires a utility to provide a written copy  
5 of a collection main extension agreement to an applicant for service, in the *absence*  
6 of such an agreement.

7 **Q. WHY IS THE ABSENCE OF ANY WATER OR COLLECTION MAIN**  
8 **EXTENSION AGREEMENTS IMPORTANT EVEN THOUGH FAR WEST**  
9 **IS CURRENTLY SERVING 63 CUSTOMERS IN THE SIERRA RIDGE**  
10 **DEVELOPMENT?**

11 A. It is important because although Mr. Kaveney indicated to County officials that the  
12 Company had sufficient water and wastewater treatment capacity to serve Sierra  
13 Ridge, and despite Mr. Kaveney's acceptance on behalf of the Company of onsite  
14 water and wastewater facilities built by Spartan, extensions to the 63 existing  
15 customers was improper without fully executed agreements. For instance, Sierra  
16 Ridge is located contiguous to but outside the Company's wastewater CC&N. Far  
17 West could have disconnected these customers once its owners became aware of  
18 the situation, but that would have posed a health risk, not to mention being unfair  
19 to these homeowners.

20 **Q. PLEASE ADDRESS THE OTHER ALLEGED VIOLATIONS CONTAINED**  
21 **IN THE SPARTAN COMPLAINT.**

22 A. Spartan claims that it has been treated unfairly by Far West because Far West  
23 allowed other developers to connect to the Company's wastewater system between  
24 August 2006 to the date of the Complaint. During this time, Far West continued to  
25 allow developers to connect lots to the Company's system and begin receiving  
26 wastewater treatment service for those areas not under the ADEQ moratorium.

1 Q. PLEASE CONTINUE.

2 Spartan also claims that Far West has violated A.R.S. § 40-361(B), which requires  
3 every utility to maintain its service, equipment and facilities to promote safety,  
4 health and comfort of its customers, employees and the public. I believe that the  
5 Commission is already addressing whether the Company has violated this statute in  
6 the context of other proceedings. Finally, I believe the evidence in this proceeding  
7 will demonstrate that Spartan's estoppel argument is without merit given the  
8 actions of its owner, Mr. Householder.

9 V. CONCLUSION

10 Q. DO YOU WANT TO PROVIDE ANY CONCLUDING REMARKS  
11 CONCERNING THIS COMPLAINT?

12 A. My primary focus at the moment is to secure the investment necessary to bring the  
13 current system into regulatory compliance, address existing customer concerns and  
14 work with the Commission to ensure the continued health and safety of the public.  
15 I do not mean to be flippant, but Spartan's complaint is the least of my concerns. If  
16 the Commission determines that it is in the public interest to allow  
17 Mr. Householder to connect over 100 lots and a commercial property without  
18 advancing his pro-rata share of costs (as a refundable advance) to build the offsite  
19 facility improvements necessary to serve these properties, even in light of the  
20 Company's financial situation, then that is a decision for the Commission to make  
21 – not the owners of Far West. If the Commission determines that it is in the public  
22 interest to require the Company to immediately refund the entire cost of onsite  
23 water and wastewater facilities to Spartan rather than use the money to benefit  
24 existing ratepayers, then that is a decision for the Commission to make – not the  
25 owners of Far West. But I do not believe that the relief sought by Spartan is in the  
26 public interest, and it is clear to me that Mr. Householder seeks to benefit from the

1 past actions of a former employee at the expense of the Company and its  
2 ratepayers. Our primary focus is to address the Company's real problems and  
3 economic realities, not how Spartan can best complete its Sierra Ridge project at  
4 the lowest cost.

5 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

6 **A. Yes.**

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**In The Matter Of The Formal Complaint  
Of Spartan Homes And Construction, Inc.  
Against Far West Water And Sewer, Inc.**

**Docket No. WS-03478A-08-0256**

**Direct Testimony of Andrew J. Capestro**

# **Exhibit 1**

BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

IN THE MATTER OF THE FORMAL  
COMPLAINT OF SPARTAN HOMES AND  
CONSTRUCTION, INC.

COMPLAINANT

VS.

FAR WEST WATER AND SEWER, INC.

RESPONDENT

DOCKET NO. WS 03478A 08-0256

YUMA, ARIZONA

NOVEMBER 21, 2008

10:00 A.M.

DEPOSITION OF MARK KAVENEY

**PREPARED FOR:**

MR. ANDY CAPESTRO, ESQ.  
H&S DEVELOPERS

**BORT COURT REPORTING SERVICE**

REGISTERED PROFESSIONAL REPORTERS  
220 SOUTH SECOND AVENUE  
YUMA, ARIZONA 85564  
PHONE: (928) 782-7591

**BY: AMY RICHARDSON**

CERTIFIED COURT REPORTER  
AZ CCR NO. 50329  
CA CCR NO. 11647

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18	dated 12/9/04		
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21	for Sewage Collection System		
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24	5 Drinking Water Service	101	6
25	agreement		
26	6 Arizona Department of	104	6
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28	Capacity Assurance for		
29	Sewage Collection System		
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34	7/2/04		

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(Exhibits Cont'd.)

23 Letter from Mark 142 142  
Kaveney to Brian  
Householder, dated  
1-8-04

24 Letter from Mark 115 115  
Kaveney to Brian  
Householder, dated  
7-9-04

BORT COURT REPORTING SERVICE

Be it remembered that, pursuant to notice, the deposition of Mark Kaveney, was taken by Complainant Spartan Homes and Construction, Inc., on oral examination on the 21st day of November 2008, at 10:37 a.m., at the office of Far West Water and Sewer, Inc., 12486 South Foothills Boulevard, Yuma, Arizona, before Amy S. Richardson, a Registered Professional Reporter, Certified Reporter, Arizona No. 50329.

The Complainant was represented by Jeffrey W. Crockett, Attorney at Law, of SNELL & WILMER, L.L.P., One Arizona Center, Phoenix, Arizona.

The Respondent was represented by Andy Capestro, Attorney at Law, H&S Developers, 12486 South Foothills Boulevard, Yuma, Arizona.

BORT COURT REPORTING SERVICE

(Exhibit Numbers 1 through 22 were marked for identification and are attached to the original transcript.)

MARK KAVENEY,  
having first been duly sworn, testified as follows:

## EXAMINATION

BY MR. CROCKETT:

Q. Good morning, Mr. Kaveney.  
A. Good morning.  
Q. First, a couple of procedural issues.  
Have you had your deposition taken before?  
A. Yes, I have.  
Q. How many times?  
A. I want to say four or five.  
Q. It's safe to say you're generally familiar with how depositions work?  
A. That's correct.  
Q. I'm gonna be asking you a series of questions today and soliciting answers from you. The purpose of the deposition is simply to get information out and on paper that we can look at and use in a proceeding that we're involved in, my client with Far West Water and Sewer.

BORT COURT REPORTING SERVICE

I'm gonna try to ask questions that are as clear as I can, but if the question is not clear, please ask me to clarify it, and I will do that.

If you don't understand what I'm asking about, please tell me you don't understand, and I'll try to explain what I want to get at, and we'll go that way.

MR. CROCKETT: Now, Andy, are you here today in the capacity of an attorney representing Mr. Kaveney?

MR. CAPESTRO: Far West.

MR. CROCKETT: Okay.

MR. CAPESTRO: But it's in the position that he used to be an employee of ours.

MR. CROCKETT: Fair enough.

Q. (BY MR. CROCKETT) Mr. Capestro may periodically raise an objection to a question that I ask.

Objections as to the form of the question are objections basically stating that I didn't ask the question in a -- in the proper way, and I will, at that point, try to reask the question that solves whatever problem there may be with the question.

He may also raise objections, from time to time, on the grounds of relevance --

MR. CROCKETT: Although I don't think that -- I don't think that in depositions in Arizona that -- at the Commission or in State court, that you're waiving your

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1 relevance objections by not asserting them here.  
 2 Q. (BY MR. CROCKETT) But to the extent  
 3 Mr. Capestro does raise an objection on the grounds that  
 4 the question is not relevant, he's doing that for the  
 5 record. I'll ask you to go ahead and answer the  
 6 question, and you can go ahead and answer the question at  
 7 that point in time.

8 If you need to take a break, let us know, and  
 9 we'll take a break. I don't know how long today we're  
 10 gonna go. We'll see how quickly we can get through  
 11 things. We can go up to four hours.

12 If it looks like, by around lunchtime, we have  
 13 a ways to go, maybe we'll take a break for lunch and come  
 14 back and finish up.

15 I think that's all I've got in terms of  
 16 introductory information.

17 Mr. Kaveney, what did you do to prepare for  
 18 your deposition today?

19 A. I drove here from Yuma, Arizona -- I'm sorry --  
 20 from El Cajon, California. I left at 5:30 this  
 21 morning.

22 Q. Have you reviewed any documents in preparation  
 23 for today?

24 A. I made a trip out here last Thursday and met  
 25 with Andy, and I looked over a -- I mean, the stack was

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1 gigantic, but I basically looked over some of the old  
 2 correspondence that I had written myself just to try to  
 3 refresh the memory on what I did and what I said and why  
 4 I wrote what I wrote. It's been a while.

5 Q. And when you refer to Andy, are you referring  
 6 to Andy Capestro?

7 A. That's correct.

8 Q. And when you say you came here, where did you  
 9 go to look at those documents?

10 A. It was at the H&S building, the one where we  
 11 originally met this morning.

12 Q. That's the H&S Developers building?

13 A. Correct.

14 Q. Approximately how long did you spend looking at  
 15 documents?

16 A. I'd say 30 minutes.

17 Q. And other than reviewing those documents at  
 18 that meeting with Mr. Capestro, did you do anything else  
 19 to prepare for this deposition?

20 A. No.

21 Q. And how many times would you say you spoke to  
 22 Mr. Capestro to prepare for the deposition today?

23 A. In preparation for the deposition, I would say  
 24 zero. I mean, this morning, we met and we were talking  
 25 about old times, nothing relevant to this case. We were

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1 talking about old stuff, waiting for you guys to get  
 2 here.

3 Last Thursday night when I came over here from  
 4 El Cajon, he just basically asked me to review those and  
 5 asked me if I recall writing them; and yeah, I wrote  
 6 them, and I recall why, and that was about it.

7 Q. And did Mr. Capestro provide you with any  
 8 documents that you took with you from that meeting?

9 A. No.

10 Q. Do you maintain any files of your own on  
 11 Far West Water and Sewer Company?

12 A. No.

13 Q. When you left Far West Water and Sewer, did you  
 14 take any files with you?

15 A. No. I turned in my laptop computer, and my  
 16 P.C. was in this office behind you. I have absolutely no  
 17 affiliation with Far West from the day I left.

18 Q. Let me back up once. I probably should have  
 19 done this, but would you state your name and address for  
 20 the record.

21 A. My name is Mark, M-a-r-k; Kaveney,  
 22 K-a-v-e-n-e-y. My address is 991 Amistad, A-m-i-s-t-a-d,  
 23 Place; Unit B, as in boy; El Cajon, E-l C-a-j-o-n,  
 24 California 92019.

25 Q. Who is your current employer?

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1 A. Veolia, V-e-o-l-i-a, Water North America.

2 Q. What position do you have at your current place  
 3 of employment?

4 A. I'm the operations supervisor.

5 Q. Would you please briefly describe your  
 6 educational background.

7 A. I have a high school diploma which I received  
 8 from Banning High School in Wilmington, California, in  
 9 1981. I completed ten correspondence courses through  
 10 Cal State Sacramento in water and wastewater.

11 I hold my Arizona grade 4 certifications in  
 12 water distribution, wastewater collections, wastewater  
 13 treatment. I hold my grade 4 in California as a  
 14 wastewater treatment operator, and I hold my C.W.E.A. lab  
 15 analyst certification, grade 1.

16 Q. And other than those college courses and  
 17 certifications that you described, do you have any other  
 18 special training or courses?

19 A. No, I do not.

20 Q. Are your Arizona certifications current?

21 A. Yes. They expire March 2011.

22 Q. Are your California certifications current?

23 A. Yes. My grade 4 expires December 2009. I am  
 24 pending a grade 5 result. I just took the exam for the  
 25 5.

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1 Q. Would you now describe, briefly, your work  
2 experience prior to the time you worked for Far West  
3 Water and Sewer?

4 A. Just to summarize it, I spent approximately  
5 15 years in the oil fields doing anything from roustabout  
6 to oil refining to production work, work over rigs,  
7 commonly known as roughneck work.

8 In 1997, I entered the wastewater industry with  
9 the County of Santa Barbara. I was with the County of  
10 Santa Barbara approximately three years, moving up to an  
11 operator 2, having passed my grade 3.

12 In about 2000, I took a job with the City of  
13 Solvang as the wastewater supervisor. At that time, I  
14 obtained my grade 4 California license. I stayed with  
15 Solvang until spring of 2003.

16 I had a brief tenure with Camp Pendleton prior  
17 to moving to Yuma and taking on the position with  
18 Far West, which I started September 29th, 2003.

19 Q. So you were hired at Far West Water and Sewer  
20 on September 29, 2003?

21 A. Yes.

22 Q. What position were you hired to fill at  
23 Far West Water and Sewer?

24 A. General superintendent.

25 Q. And when did you leave your employment at

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1 Far West Water and Sewer?

2 A. December 15th, 2006.

3 Q. And why did you leave Far West Water and  
4 Sewer?

5 A. Far West Water and Sewer was going through a --  
6 not a reorganization. I guess you could call it that.  
7 We had a lot of issues going on, a lot of strong  
8 development going on, a lot of delays on the part of  
9 A.D.E.Q. as far as permits and other things that were  
10 going on throughout our water and wastewater facilities.

11 Far West had hired a company by the name of  
12 Coriolis. I couldn't spell it if I had to right now.  
13 They brought in a support group team. They had  
14 technical, engineering. They had a well-rounded support  
15 group.

16 My position with Far West was that of the  
17 old-school way, if you would, where you had a general  
18 superintendent that orchestrated the entire show.

19 Because we grew so big and we had to change our  
20 mode of operation, I didn't really want to participate in  
21 that. I don't know if it's pride or what. They had  
22 other realms.

23 Let me give you a for-instance. They split the  
24 superintendent position up into water and wastewater.  
25 They ended up with a water superintendent and a

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1 wastewater superintendent.

2 Q. Did that occur prior to the time that you left  
3 the company?

4 A. It was in discussion. We kind of reached a  
5 mutual agreement where, "I can understand where you guys  
6 are wanting to go. I really would not like to go there,"  
7 so I accepted the position in California, and we parted  
8 peacefully. I didn't quit. I didn't get fired. It was  
9 just -- we did what's best for everybody.

10 Q. Is it accurate to say it was a mutual decision  
11 to separate at that point in time?

12 A. Absolutely.

13 Q. When you were at Far West Water and Sewer, did  
14 you have a written employment contract?

15 A. Yes, sort of. It was a written employment  
16 contract. We never finalized it. It was kind of in the  
17 works when all this other stuff was going on.

18 Q. And I assume when you say that you didn't  
19 finalize it, that you never signed an employment  
20 contract?

21 A. Correct.

22 Q. Did you keep a copy of that contract, or do you  
23 have a copy of that in your possession?

24 A. No, I do not. It was basically "Here's what  
25 I'm thinking I would want," just kind of idealisms of an

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1 employment contract.

2 We jotted some things down on paper, but again,  
3 it was never formalized or finalized because they were  
4 going through a lot of decision processes as well; "Where  
5 do we go?" "Do we contract with this guy?" "Do we go  
6 with Coriolis?" "What are we gonna do?" It was a real  
7 confusing time, if you will.

8 Q. Did you have any position with Far West Water  
9 and Sewer other than general superintendent?

10 A. Officially, I was the lab director for the  
11 Far West water lab.

12 Q. Was the lab a part of the company, or was it a  
13 separate affiliate?

14 A. It was part of the company. It was under  
15 Far West Water and Sewer.

16 Q. And as the director -- did you say you were the  
17 director of the lab?

18 A. Mm-hmm.

19 Q. What were your responsibilities -- let me back  
20 up.

21 What did the lab do?

22 A. To give you a brief background, water and  
23 wastewater samples, you have to test for total coliform  
24 and fecal coliform.

25 Hold time, the time where you withdraw the

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1 sample to the time you ran the analysis or set it up is  
2 six hours. Our only laboratory here in Yuma went out of  
3 business, so we were challenged with the hold time  
4 issues, to draw a sample and drive it to Phoenix,  
5 Arizona, was real challenging.

6 We decided to go ahead and open up our own  
7 micro lab and test our own fecal coli lab and total  
8 coliform in both water and wastewater.

9 Because of my lab certification from California  
10 and my background, the Arizona Department of Health  
11 Services recognized me as a qualifying person to be the  
12 lab director.

13 In that position, you're ultimately responsible  
14 for the day-to-day operation of the laboratory, assuring  
15 that all of the quality assurance and quality control  
16 methods are met, that all state requirements and  
17 regulations are followed. That's about it. You're the  
18 responsible party for the lab.

19 Q. Did you test samples from entities other than  
20 Far West Water and Sewer?

21 A. Yes, we did, when we got our license. We went  
22 commercial with it, and the reason we did that is  
23 because, with the only local lab going out of business,  
24 there's other small facilities around us that needed the  
25 same help we did. It wasn't to try to get rich or become

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1 this profitable lab, it was just to try to help our  
2 neighbors out.

3 Q. Do you know whether Far West Water and Sewer  
4 still operates that lab today?

5 A. I have no direct knowledge. I've heard that  
6 the lab has since been closed down.

7 Q. Mr. Kaveney, did you ever work for  
8 H&S Developers?

9 A. No, I did not.

10 Q. Did you ever work for any affiliate of Far West  
11 Water Company other than the lab?

12 A. No, I did not.

13 Q. As general superintendent of Far West Water and  
14 Sewer, who did you report to?

15 A. Originally, I reported to the director of  
16 operations.

17 Q. What person was that?

18 A. That was Dusty Thomas.

19 Q. Was Dusty Thomas the director of operations for  
20 Far West Water and Sewer?

21 A. That's correct.

22 Q. Did Mr. Thomas also have a position with  
23 H&S Developers?

24 A. Yes, he did. He was the director of operations  
25 as well.

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1 Q. So is it correct, then, that he worked for both  
2 companies?

3 A. Yes.

4 Q. So on an organizational chart, Mr. Thomas would  
5 be above you?

6 A. That's correct.

7 Q. And do you know who Mr. Thomas reported to?

8 A. My understanding is that Mr. Thomas reported to  
9 the board.

10 Q. And when you say, "the board," are you  
11 referring to the board of Far West Water and Sewer  
12 company?

13 A. Yes.

14 Q. And do you know who was on that board?

15 A. I believe the board was Paula Capestro, Sandi  
16 Braden, and Dorothy Schechert. I don't know if Bruce  
17 Jacobson was on that board or not. I don't know that for  
18 a fact.

19 Q. Did you -- in your capacity as general  
20 superintendent, did you deal with the board?

21 A. No, I did not.

22 Q. Is it accurate that your dealings, with respect  
23 to the water company, would have gone through  
24 Mr. Thomas?

25 A. That's correct.

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1 Q. And did Mr. Thomas, then, interface with the  
2 board?

3 A. To the best of my knowledge, yes, he did. I  
4 never witnessed it myself.

5 Q. Was there any person in between Mr. Thomas and  
6 the board?

7 A. Not that I was aware.

8 Q. Now, as general superintendent, were you  
9 responsible for the day-to-day operations of the water  
10 and wastewater company?

11 A. That's correct.

12 Q. Was Mr. Thomas responsible, in any way, for the  
13 day-to-day operations of the water and wastewater  
14 company?

15 A. Yes, he was.

16 Q. So how did you allocate responsibilities  
17 between the two of you?

18 A. Dusty pretty much had the business end of  
19 Far West Water and Sewer. He made the upper managerial  
20 decisions.

21 My capacity as superintendent was pretty much  
22 in the field. I was the one that had the A.D.E.Q.  
23 certifications required to operate the public utility.

24 Mr. Thomas was not certified through A.D.E.Q.  
25 My capacity was more into the regulatory, dealing with

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1 A.D.E.Q., the A.C.C., making sure that our plants were  
 2 operated in compliance.  
 3 As far as the business -- the dollars and the  
 4 cents, contracts, that was all Mr. Thomas.  
 5 Q. Do you recall approximately how many employees  
 6 the water and wastewater company had?  
 7 A. I think, at one time, there was about 35, if I  
 8 recall.  
 9 Q. Now, of those 35 employees, approximately how  
 10 many of those reported to you?  
 11 A. I think, at one time, there was 29 of them.  
 12 Q. Were there any employees that reported up  
 13 through Mr. Thomas?  
 14 A. Yes. That would have been our accountant  
 15 people.  
 16 Q. What about business office people?  
 17 A. Business office would report to Mr. Thomas.  
 18 Q. But anything to do with the actual operation of  
 19 the water system and the wastewater system, that would  
 20 have flowed up through you?  
 21 A. Yeah. I had all of the A.D.E.Q.-certified  
 22 operators, the field operators, and for a brief tenure, I  
 23 had the girls up at the front counter, the customer  
 24 service part of it; but I never had any dealings with the  
 25 business end, the money, dollars, cents, all of that.

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1 capacity assurance forms?  
 2 A. Yes, I was.  
 3 Q. And did you, in fact, complete capacity  
 4 assurance forms?  
 5 A. Yes, I did.  
 6 Q. Did you sign capacity assurance forms on behalf  
 7 of Far West Water and Sewer?  
 8 A. Yes, I did.  
 9 Q. Did you prepare water service agreements?  
 10 A. Yes, I did.  
 11 Q. And did you prepare sewer service agreements?  
 12 A. Yes, I did.  
 13 Q. And did you sign both of those documents on  
 14 behalf of Far West Water and Sewer?  
 15 A. Yes, I did.  
 16 Q. And was it your understanding that you had  
 17 authority from Far West Water and Sewer to sign documents  
 18 on behalf of the company?  
 19 A. My understanding is I had a delegated authority  
 20 from Mr. Thomas to do the job. Originally Mr. Thomas  
 21 used to sign these, and he asked me if I could take over  
 22 that task.  
 23 So my impression is since he asked me to take  
 24 over this thing that he used to do, it was more of a  
 25 delegated authority from Mr. Thomas.

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1 Q. How many certified operators did Far West Water  
 2 and Sewer employ?  
 3 A. I believe, at one time, we had 27.  
 4 Q. And that's in addition to yourself?  
 5 A. Yes.  
 6 Q. Mr. Kaveney, what were your responsibilities as  
 7 general superintendent of Far West Water and Sewer?  
 8 A. Just the day-to-day operation of 7 wastewater  
 9 treatment plants; 13 sewage lift stations; 6 M.G.D.  
 10 surface water treatment plants; groundwater system, which  
 11 consisted of 20-plus groundwater wells; again, regulatory  
 12 compliance, dealing with A.D.E.Q., dealing with the  
 13 A.C.C.  
 14 Anytime there was a problem out in the field, I  
 15 was the one to go out there. If it was above my  
 16 operators' capabilities, confined-space entries, anything  
 17 that had any hint of possible danger, I was always  
 18 present there. Though I wasn't the official safety  
 19 officer, I was responsible for the safety and operations  
 20 every day.  
 21 Q. Let me ask you a few specific questions.  
 22 In your role as general superintendent, did you  
 23 meet with developers?  
 24 A. Yes, I did.  
 25 Q. And were you responsible for completing

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1 Q. Do you remember when you received that  
 2 delegated authority to start signing these types of  
 3 documents?  
 4 A. I don't know.  
 5 Q. Was it soon after you started work for Far West  
 6 Water and Sewer, or was it closer to the time that you  
 7 left the company?  
 8 A. It would have been right after I hired on,  
 9 shortly thereafter.  
 10 Q. Did you prepare main extension agreements?  
 11 A. Yes, I did.  
 12 Q. And did you sign main extension agreements?  
 13 A. I believe I did. I'm actually not sure, to be  
 14 honest with you. I know I prepared them. I know I used  
 15 to take them to have the developers sign them, but I  
 16 honestly don't remember if I actually signed them or if  
 17 they went to Dusty or somebody else to sign. I don't  
 18 recall that.  
 19 Q. Were there other people at Far West Water and  
 20 Sewer that prepared main extension agreements?  
 21 A. Toward the end of my tenure here, that  
 22 responsibility was removed from me, and it was passed on  
 23 to -- I want to say Jay Shapiro, I believe, started  
 24 writing these extension agreements.  
 25 Q. And Mr. Shapiro is an attorney that Far West

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1 Water and Sewer uses?  
 2 A. Yes.  
 3 Q. But at the beginning of your employment as  
 4 general superintendent, you were responsible for  
 5 preparing these main extension agreements?  
 6 A. Yes.  
 7 Q. When you talk about main extension agreements,  
 8 do you mean that to include both water and sewer  
 9 agreements?  
 10 A. That's correct.  
 11 Q. Did you submit main extension agreements to the  
 12 Arizona Corporation Commission for approval?  
 13 A. Yes, I did.  
 14 Q. Did you inspect water and sewer infrastructure  
 15 that was being constructed by developers for Far West  
 16 Water and Sewer?  
 17 A. No, I did not.  
 18 Q. Do you know who did do those inspections on  
 19 behalf of the company?  
 20 A. Whatever engineer was over the project, I would  
 21 use his stamp to say that it's okay.  
 22 Q. The engineers that were over the project, were  
 23 those outside engineers?  
 24 A. Yeah. Every developer has their own  
 25 engineer.

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1 Q. So whatever engineer the developer used, that  
 2 engineer would be responsible for inspecting the  
 3 construction as it went along?  
 4 A. Correct. When I -- when I would receive data  
 5 for a main line extension agreement, there used to be  
 6 several parts to the main line extension agreement  
 7 regarding data that I would have to receive; financial  
 8 information, engineer's final report.  
 9 So the bottom line, when I gathered all that  
 10 data together and I seen that this engineer has his stamp  
 11 on it, he's certifying that this system is put in per  
 12 code, I didn't see the need to inspect it myself, because  
 13 if something went awry, you go after the engineer that  
 14 said it was okay.  
 15 Q. As general superintendent, did you prepare and  
 16 send letters of acceptance regarding water and sewer  
 17 infrastructure?  
 18 A. Yes.  
 19 Q. Did you believe that you were authorized, on  
 20 behalf of the company, to send those letters?  
 21 A. Again, that was the part that Mr. Thomas used  
 22 to do, so I believe I was under delegated authority from  
 23 Mr. Thomas to do it.  
 24 Q. And you did, in fact, send letters of  
 25 acceptance regarding infrastructure that had been

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1 constructed for Far West Water and Sewer Company?  
 2 A. Yes.  
 3 Q. Did anyone else at Far West Water and Sewer  
 4 sign letters of acceptance while you were there as  
 5 general superintendent?  
 6 A. Yeah. Again, Jay Shapiro took over pretty much  
 7 all of the -- any type of contractual agreements,  
 8 anything of that nature. Mr. Shapiro took over toward  
 9 the end of my tenure here.  
 10 Q. Do you believe that Mr. Shapiro may have signed  
 11 some letters of acceptance of water and sewer  
 12 infrastructure for the company?  
 13 A. I have no knowledge of that.  
 14 Q. Were you responsible for making refunds of  
 15 advances in aid of construction?  
 16 A. No.  
 17 Q. Do you know what advances in aid of  
 18 construction are?  
 19 A. I don't have a clear definition of it, no. It  
 20 used to be handled by the office manager. She used to  
 21 deal with refunds regarding main line extension  
 22 agreements.  
 23 Q. Would that responsibility have fallen under  
 24 Mr. Thomas?  
 25 A. Yes.

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1 Q. For infrastructure that Far West Water and  
 2 Sewer was itself constructing, did you oversee that  
 3 construction?  
 4 A. Far West Water and Sewer never did any  
 5 construction. We were merely an operations company.  
 6 Q. So if a wastewater treatment plant was being  
 7 constructed for Far West Water and Sewer, that  
 8 construction would be done by an outside contractor?  
 9 A. Correct.  
 10 Q. And was the process the same as you described  
 11 to me earlier, that the engineer on the project would  
 12 complete the construction inspections as construction  
 13 went along?  
 14 A. Correct.  
 15 Q. And then that engineer would seal the various  
 16 inspection reports and certifications and provide those  
 17 to you?  
 18 A. Correct.  
 19 Q. Did all of that type of information come  
 20 through you?  
 21 A. I would assume, yes.  
 22 Q. Let me ask it this way -- strike that.  
 23 MR. CAPESTRO: Hold on one second.  
 24 (Informal discussion off the record.)  
 25 MR. CAPESTRO: There will be a continuing

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1 objection to anything that might not be relevant or  
 2 objectionable, and I'll just let him go.  
 3 Unless you really do something that offends me.  
 4 MR. CROCKETT: Fair enough.  
 5 Q. (BY MR. CROCKETT) Mr. Kaveney, when developers  
 6 and construction companies submitted documentation on  
 7 construction, whether that was engineering plans or test  
 8 results or certifications, did that information come  
 9 through you?  
 10 A. Yes, it did.  
 11 Q. Were you responsible for compliance with the  
 12 regulations of the Arizona Department of Environmental  
 13 Quality?  
 14 A. Yes.  
 15 Q. Were you responsible for compliance with  
 16 regulations of the Arizona Department of Water  
 17 Resources?  
 18 A. Yes.  
 19 Q. Were you responsible for compliance with the  
 20 regulations of the Arizona Corporation Commission?  
 21 A. Yes.  
 22 Q. Did you deal with matters on behalf of Far West  
 23 Water and Sewer company at the Arizona Corporation  
 24 Commission?  
 25 A. Yes.

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1 charge for a new type of service, that type of tariff  
 2 amendment would have been handled by someone else?  
 3 A. That's correct.  
 4 Q. Were you responsible for customer service?  
 5 A. Yes, I was.  
 6 Q. Does that include responding to customer  
 7 complaints?  
 8 A. Yes.  
 9 Q. Did Far West Water and Sewer Company have  
 10 frequent customer complaints?  
 11 A. Yes.  
 12 Q. Describe for me the nature of the complaints.  
 13 A. A lot of the complaints came from our winter  
 14 visitor population. They would come back after a long,  
 15 hot summer, and their house would stink.  
 16 So I would go to their house and inspect their  
 17 home for them, and their toilet bowls were dry, and the  
 18 sinks were dry, and the sewer gases from the street came  
 19 in. I would advise them on ways to remedy the problem,  
 20 to seal up their house better.  
 21 The typical complaint was the winter visitor  
 22 that had an automatic sprinkler system come on. He would  
 23 complain about an excessive high water bill. "Why is my  
 24 water bill so high?"  
 25 "Well, your sprinkler system froze up. It

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1 Can I make a correction to the previous  
 2 statement?  
 3 Q. By all means.  
 4 A. You asked me if I was responsible for A.C.C.  
 5 compliance.  
 6 Q. Correct.  
 7 A. Partially. I did not take care of all the  
 8 A.C.C. compliance. My capacity was dealing with pretty  
 9 much complaints from either customers or others in  
 10 responding to complaints, but as far as the rest of the  
 11 corporation commission, I wasn't responsible.  
 12 Again, the dollars, cents, rate settings, fees,  
 13 I had nothing to do with that.  
 14 Q. For example, if a tariff amendment needed to be  
 15 filed for the company, that is something you would not  
 16 have done?  
 17 A. Typically, no. I believe I did file a tariff  
 18 regarding -- I'm not gonna get the terminology right.  
 19 Basically empowering Far West to make mandatory water  
 20 rationing.  
 21 Q. That's referred to as a curtailment tariff.  
 22 A. There you go. I did do that. We didn't have  
 23 one. The only reason I did it is I thought we should  
 24 have one just in case the well goes dry.  
 25 Q. If the company were going to impose a new

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1 stuck open." Typical stuff like that.  
 2 Q. Did Far West Water and Sewer Company have a  
 3 written description of your job duties as general  
 4 superintendent?  
 5 A. No.  
 6 Q. Who trained you in your job duties as general  
 7 superintendent?  
 8 A. I came with experience already in the water and  
 9 wastewater industry, so I didn't require any training, as  
 10 far as that goes.  
 11 Training I did receive, as far as main line  
 12 extensions, capacity assurance letters, dealing with  
 13 developers, I received from Dusty Thomas.  
 14 Q. Did you -- strike that.  
 15 Had you worked for a private water or sewer  
 16 company before you worked for Far West Water and Sewer?  
 17 A. No.  
 18 Q. Your prior experience had been with municipal  
 19 entities?  
 20 A. Correct.  
 21 Q. Do you know if Far West Water and Sewer has an  
 22 employment handbook?  
 23 A. When I hired on, yes, they did.  
 24 Q. Did you receive a copy of the employment  
 25 handbook?

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1 A. Yes, I did.  
 2 Q. Do you recall if the employment handbook had a  
 3 description of the job duties of various employees of the  
 4 company?  
 5 A. No.  
 6 Q. Just to make it clear, there was no description  
 7 of the responsibilities of general superintendent in the  
 8 employment handbook?  
 9 A. Correct.  
 10 Q. Do you still have a copy of the employment  
 11 handbook?  
 12 A. No, I do not.  
 13 Q. You mentioned earlier the approximate number of  
 14 employees -- well, let me start over. I don't remember  
 15 what you said earlier.  
 16 How many employees did Far West Water and Sewer  
 17 have when you were working there?  
 18 A. If memory serves, 35 total, and approximately  
 19 27 to 29 out in the field.  
 20 Q. So that would leave 6 or 7, possibly, that  
 21 worked in the office?  
 22 A. Correct.  
 23 Q. Do you know whether all of those 35 employees  
 24 were dedicated to the water and sewer company?  
 25 A. I don't understand what you're asking.

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1 apart. We put Far West over here and H&S across the  
 2 street.  
 3 Q. Do you remember when this building that we're  
 4 sitting in was constructed?  
 5 A. It was here when I hired in.  
 6 Q. But when you hired in, this building was not  
 7 being used for Far West Water and Sewer Company?  
 8 A. My understanding, this used to be an old A.P.S.  
 9 office that sat vacant for quite some time. Rural Metro  
 10 used the back part of it as a fire station, and I think  
 11 it was sometime in '04 that I ended up moving over  
 12 here.  
 13 Q. Prior to sometime in 2004, the operations  
 14 shared office space over across the street from us?  
 15 A. Correct.  
 16 Q. And what was the street address at that  
 17 original location?  
 18 A. 12486 Foothills Boulevard, I believe.  
 19 Q. Within that office, were the records of the two  
 20 companies co-mingled?  
 21 A. I don't believe so, no. I had my own office  
 22 with my own file space. All the extension agreements and  
 23 all that were in my office.  
 24 Q. And then everything with H&S Developers was in  
 25 a separate place?

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1 Q. I'm trying to understand whether any of those  
 2 employees would have worked both for the water and sewer  
 3 company and for H&S Developers.  
 4 A. No. Every employee that I had as an operator  
 5 worked in their designated field. I had my water system  
 6 operators, my distribution system operators, then I had  
 7 my wastewater system operators.  
 8 Q. And those employees were dedicated to the water  
 9 and wastewater company?  
 10 A. That's correct.  
 11 Q. Now, the people that worked in the office, do  
 12 you know whether any of those people also wore two hats,  
 13 meaning that they worked for the water and wastewater  
 14 company and for H&S Developers?  
 15 A. The only double hat I knew of was Dusty Thomas  
 16 and the safety officer. I believe the safety officer  
 17 called both H&S and Far West.  
 18 Q. Do you remember the name of the safety  
 19 officer?  
 20 A. Her name was Diane. I can't remember her last  
 21 name.  
 22 Q. Did Far West Water and Sewer Company and  
 23 H&S Developers share office space?  
 24 A. At first -- when I first got here, we did.  
 25 About midway through my tenure here, we pretty well split

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1 A. Correct, yeah. We didn't have a mutual room  
 2 between the two companies.  
 3 Q. Who maintained the files for Far West Water and  
 4 Sewer Company?  
 5 A. I did.  
 6 Q. That was part of your responsibility as general  
 7 superintendent?  
 8 A. Upon my own interpretation, yes. Again, there  
 9 was no job description, but I did feel that I should --  
 10 with my position and the fact that I held the licenses  
 11 required, that I should be the custodian of the  
 12 records.  
 13 Q. When you were the general superintendent, who  
 14 were the key employees of Far West Water and Sewer  
 15 Company?  
 16 A. You're asking the wrong guy. All of them.  
 17 Q. That's a fair answer.  
 18 It's safe to say, obviously, that Mr. Thomas  
 19 was a key employee?  
 20 A. Yeah. Mr. Thomas was the upper managerial guy.  
 21 Then you had myself as the general superintendent. I did  
 22 have a distribution supervisor, a water supervisor, and a  
 23 wastewater supervisor.  
 24 Q. What were the names of those three  
 25 individuals?

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1 A. The water supervisor was Shawn Duvall. The  
 2 distribution supervisor was Cruz Ariaga. My wastewater  
 3 supervisor was Lynn Whitton.  
 4 Q. Did any of those individuals have  
 5 responsibility for preparing main extension agreements?  
 6 A. No.  
 7 Q. Did any of those individuals ever prepare a  
 8 main extension agreement, to your knowledge?  
 9 A. No.  
 10 Q. Do you know what position -- are you familiar  
 11 with Paula Capestro?  
 12 A. Yes.  
 13 Q. Do you know what position she had with respect  
 14 to Far West Water and Sewer Company?  
 15 A. She was president.  
 16 Q. And how actively involved was Ms. Capestro in  
 17 the operation of Far West Water and Sewer Company?  
 18 A. At the end of my tenure, very. Mr. Thomas -- I  
 19 don't know what happened to Mr. Thomas, if he retired.  
 20 He left the company. At that time, Ms. Capestro stepped  
 21 in.  
 22 Q. Her involvement with the company, did that  
 23 extend to the day-to-day operations of the company?  
 24 A. Yes. At that time, I reported directly to  
 25 her.

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1 Q. And that began to occur after Mr. Thomas left  
 2 the company?  
 3 A. That's correct.  
 4 Q. And approximately when did that occur?  
 5 A. I want to say spring of '06. I could be wrong,  
 6 but I want to say spring of '06.  
 7 Q. That would have been approximately six months  
 8 before you left the company?  
 9 A. No; almost a year before I left the company.  
 10 Q. Did you leave the company in December of  
 11 2006?  
 12 A. Correct.  
 13 Q. And if she --  
 14 A. January, February. Maybe that's still  
 15 winter.  
 16 Q. So it would have been approximately a year  
 17 before you --  
 18 A. Yeah.  
 19 Q. Do you know whether Ms. Capestro is certified  
 20 as a certified operator?  
 21 A. No.  
 22 Q. Was she involved in physical operations of the  
 23 company, or was it more in the nature of the managerial  
 24 side?  
 25 A. She was very much managerial. She delegated

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1 the responsibilities of the field work to those of us  
 2 like myself.  
 3 Q. Now, earlier, you mentioned a Ms. Braden, who  
 4 you believe was on the board of directors?  
 5 A. Mm-hmm.  
 6 Q. Was Ms. Braden involved in the operations --  
 7 strike that.  
 8 Was Ms. Braden directly involved in the  
 9 operations of Far West Water and Sewer Company?  
 10 A. No.  
 11 Q. Did you ever interface with her?  
 12 A. Mostly on a social level, actually. Never  
 13 really sat down -- any business dealings were mostly with  
 14 Paula.  
 15 Q. Do you know a person named Sarah Phillips?  
 16 A. Yes, I do.  
 17 Q. How do you know Sarah Phillips?  
 18 A. Sarah Phillips originally worked for H&S as one  
 19 of the accountants. When they were restructuring, they  
 20 transferred her over to Far West to be kind of a  
 21 secretary for me, to try to help me out with the  
 22 time-consuming part of the paperwork, making photocopies,  
 23 clerical work.  
 24 Q. What were the job responsibilities of  
 25 Ms. Phillips when she was working for you?

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1 A. She would -- again, any photocopies that needed  
 2 to be made, any reports that I wrote that needed to have  
 3 multiple copies, she would make.  
 4 I can't recall what the project was, but I  
 5 remember her making multiple copies of binders and  
 6 manuals that we had.  
 7 I asked her to -- I put her in charge of our  
 8 laboratory data when it would come in. I would give her  
 9 a copy of a chain of custody, and I trained her on how to  
 10 match the chains of custody and check off so that when I  
 11 would grab the pile of lab data from the laboratory, it  
 12 saved me time on having to verify that all the stuff came  
 13 in that was supposed to come in.  
 14 If we were missing lab results, she would get  
 15 on the phone and call the lab and find out where they  
 16 were.  
 17 Q. Did Ms. Phillips report directly to you?  
 18 A. Yes.  
 19 Q. Did Ms. Phillips report to any other person at  
 20 Far West Water and Sewer Company?  
 21 A. No. She worked directly for me.  
 22 Q. At the time that Ms. Phillips worked for you,  
 23 did she also have responsibilities with H&S Developers?  
 24 A. No.  
 25 Q. So is it accurate to say she was a dedicated

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1 employee to the water and wastewater operation at that  
 2 time?  
 3 A. Yes.  
 4 Q. Did Ms. Phillips ever prepare any main  
 5 extension agreements?  
 6 A. No.  
 7 Q. Mr. Kaveney, with respect to the files and  
 8 records of Far West Water and Sewer Company, were those  
 9 kept in good order at the time you were there?  
 10 A. Yes, they were.  
 11 Q. And you testified -- you said earlier that you  
 12 were the person responsible for making sure that the  
 13 files were kept in order?  
 14 A. Correct.  
 15 Q. Did Ms. Phillips assist you in that regard?  
 16 A. Yes, she did.  
 17 Q. And was it -- it's your opinion that the files  
 18 were maintained in good order?  
 19 A. Yes, it was.  
 20 Q. Did you ever have problems losing files at  
 21 Far West Water and Sewer?  
 22 A. No.  
 23 Q. Are you aware that any files were ever  
 24 inadvertently destroyed?  
 25 A. No. I'm very adamant about files and

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1 record-keeping.  
 2 Q. What persons at Far West Water and Sewer  
 3 Company had access to the files?  
 4 A. It would have been myself and Sarah, and those  
 5 files were kept under lock and key; and the office  
 6 manager, Sherrill, had access there.  
 7 Q. Do you recall the last name of Sherrill?  
 8 A. Severe.  
 9 Q. Did persons working for H&S Developers have  
 10 access to the files of Far West Water and Sewer  
 11 Company?  
 12 A. No.  
 13 Q. Did Mr. Thomas have access to the files?  
 14 A. If Mr. Thomas wanted to look at the files, he  
 15 would have had to ask me or Sarah or Sherrill for a  
 16 copy.  
 17 Q. Did Ms. Capestro have access to the files?  
 18 A. Again, the three of us were the only ones that  
 19 had keys to that file.  
 20 Q. So the three people you described were the  
 21 gatekeepers to the files?  
 22 A. Correct.  
 23 Q. And anyone that wanted access to those files  
 24 would have had to have gone through one of the three of  
 25 you?

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1 A. That's correct.  
 2 You need to understand that H&S Developers,  
 3 most people know, is owned by the same people as  
 4 Far West. To prevent any conflict of interest or any  
 5 accusations that things might be shady, we kept a very,  
 6 very strict policy; "We're Far West. These are our  
 7 files." H&S was a completely separate entity.  
 8 It sounds like it's extreme to have three keys,  
 9 three people for files, but that's the reason why.  
 10 Q. Mr. Kaveney, what was the process at Far West  
 11 Water and Sewer Company when a developer would come and  
 12 request water and sewer service?  
 13 A. When a customer would come in?  
 14 Q. When a developer --  
 15 A. Oh. A developer.  
 16 Q. Let me give you a hypothetical.  
 17 I'm a developer. I'm interested in building a  
 18 subdivision. I come to Far West Water and Sewer Company,  
 19 and I say, "I would like to receive water and sewer  
 20 service from your company."  
 21 Describe for me, if you would, the things that  
 22 happened when you received that type of request.  
 23 A. Okay. I'm going off of memory. My accuracy is  
 24 probably not the sharpest on this one.  
 25 I believe that the developer, first off, would

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1 have his engineering company submit a plat to Yuma  
 2 County. Yuma County would send us this plat saying,  
 3 "Developer X wants to build this subdivision."  
 4 At that point in time, I would review the plat.  
 5 "Where is it gonna be?" "What sewer plant is it gonna  
 6 serve?"  
 7 I would then forward that to the director of  
 8 operations, usually with comments. Either it's a go;  
 9 it's a no-go; it might be a go; this may not work out.  
 10 He would give the final review and go back to the County.  
 11 Then I would usually receive a phone call from  
 12 the engineer shortly thereafter requesting capacity  
 13 assurance letters, sewer service agreement, water service  
 14 agreement.  
 15 These were all required documents that the  
 16 engineer had to have to submit to the County so the  
 17 developer could grab his permit to start his  
 18 construction.  
 19 Q. Were those documents important documents, in  
 20 your mind?  
 21 A. Yes.  
 22 Q. And you understood that people relied upon  
 23 those documents in making filings to the County?  
 24 A. Correct.  
 25 Q. So it's safe to say that you gave those

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1 documents appropriate attention?  
 2 A. Yes.  
 3 Q. Or you attempted to give those --  
 4 A. I attempted, yes.  
 5 Q. What I'm trying to get at is: I just want to  
 6 see if you understood that these were important documents  
 7 that went to the County and the County relied on those  
 8 documents.  
 9 A. Yes.  
 10 Q. And the developers relied on those documents?  
 11 A. Correct.  
 12 Q. So -- then I think I interrupted you. You were  
 13 talking about capacity assurance letters, water service  
 14 and sewer service agreements. Were we up to main  
 15 extension agreements.  
 16 A. Yeah. The main extension agreements were  
 17 usually generated once we received all the required  
 18 documentation from the engineer, whoever the developer  
 19 hired.  
 20 Usually the thing that took the most time would  
 21 be dollars and cents from the engineer because,  
 22 obviously, I guess, to build the subdivision, you had to  
 23 buy the parts and pieces to put them in the ground to  
 24 come up with a bill to submit.  
 25 Q. Did the process typically begin with a meeting

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1 with the developer?  
 2 A. Most of the time, no. Most of the time, we  
 3 would receive a plat from the County. We would look it  
 4 over. I'd give it to Dusty, and Dusty would return it to  
 5 the County with an okey-doke. Away we would go.  
 6 At certain times, we would meet with  
 7 developers, if there was a certain circumstance. We  
 8 tried to help out as best as we could.  
 9 Q. When you say, "We would meet with developers,"  
 10 would that have been your responsibility?  
 11 A. Yeah.  
 12 Q. If there was a meeting that was going to occur  
 13 with a developer, would you generally have attended that  
 14 meeting?  
 15 A. If it was field questions; in other words, the  
 16 developer says, "I really want to build this project  
 17 here." "Where is the sewer line?" "Where is the water  
 18 line?" "Do you know what size it is?"  
 19 Typically, myself and my field foreman would go  
 20 out and show them where the lines were and kind of  
 21 orientate them on where stuff is at.  
 22 Q. Did Mr. Thomas meet with developers?  
 23 A. I'm sure he did but not at the field capacity.  
 24 He would meet with them, I would assume, over the  
 25 business end of it, if you will.

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1 Q. Did Ms. Phillips meet with developers?  
 2 A. No.  
 3 Q. Did Ms. Caestro meet with developers?  
 4 A. No.  
 5 Q. Did Ms. Braden meet with developers?  
 6 A. No.  
 7 Q. I think we eliminated most of the key people.  
 8 If there were a meeting with a developer, it was probably  
 9 gonna be you, if there were operational issues; or  
 10 Mr. Thomas, if it was more of the business end of the  
 11 transaction?  
 12 A. Correct.  
 13 Q. Did you ever get involved in the business end  
 14 of the transaction?  
 15 A. No.  
 16 Q. Did Far West Water and Sewer Company have  
 17 materials that it provided to developers who were  
 18 interested in obtaining water and sewer service?  
 19 A. It seems like when I first got here, there was  
 20 a time that Far West was offering to put in a property  
 21 valve, but --  
 22 MR. CAESTRO: By "materials," do you mean  
 23 paperwork?  
 24 Q. (BY MR. CROCKETT) Yeah. I'm talking about  
 25 instructions, written materials that a developer could

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1 follow in going through the process of getting service.  
 2 A. Yeah. I believe there was paperwork like that.  
 3 That would usually come from Sherrill.  
 4 Q. Sherrill, the office manager?  
 5 A. Correct. Or the girls up front, I believe, had  
 6 copies of them.  
 7 Q. We'll start looking at some documents now.  
 8 Mr. Kaveney, I've put in front of you a binder  
 9 that contains a number of exhibits that we're gonna look  
 10 at today.  
 11 If you would, open the binder up to the first  
 12 tab. Take a look at that document. Tell me if you  
 13 recognize it.  
 14 A. (Complying.)  
 15 Recognize it in what capacity?  
 16 Q. The first page is a cover page, a fax cover  
 17 page. Turn to the second page of the document.  
 18 A. (Complying.)  
 19 Q. The second page of this exhibit, which is  
 20 Exhibit 1, for the record, is a document that has the  
 21 caption Far West Water and Sewer, Inc., development  
 22 policy and procedures, 2003. Do you see that?  
 23 A. Yes, I do.  
 24 Q. Have you seen this document before?  
 25 A. I've seen one similar. I cannot say that this

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1 is the one that we used, because I'm looking at the fax  
 2 cover sheet by Murphy Campbell, who was my predecessor.  
 3 I don't even see a date on the fax cover.  
 4 July of '03. That was before I got here. I  
 5 don't know if changes were made to this or not. I know  
 6 Sherrill would make amendments to this periodically.  
 7 Q. But during your tenure at the company, do you  
 8 remember seeing a document like this?  
 9 A. Yes. Similar, yes.  
 10 Q. And you mentioned the cover sheet shows that  
 11 this document was sent by Murphy Campbell?  
 12 A. Correct.  
 13 Q. Do you know who Murphy Campbell is?  
 14 A. He was the previous general superintendent. I  
 15 actually interviewed with him for a wastewater supervisor  
 16 job around -- probably around July, around this time.  
 17 Q. And that was prior to you joining the company  
 18 as general superintendent?  
 19 A. Correct.  
 20 Q. Was Mr. Campbell still at the company when you  
 21 joined as general superintendent?  
 22 A. No. He was gone.  
 23 Q. If you would turn a couple of pages back, I've  
 24 marked these exhibits with a numbering system on the  
 25 bottom, a Bates numbering system.

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1 If you would look at the document that's  
 2 identified as KAV0004.  
 3 A. Yeah.  
 4 Q. Do you recognize that document?  
 5 A. That one, I don't recognize, for some reason.  
 6 I don't recall using a checklist for development.  
 7 Q. If you would flip back two pages to the  
 8 document that is entitled, "Development Policies and  
 9 Procedures 2003."  
 10 A. Mm-hmm.  
 11 Q. That is a document that you recognize, some  
 12 form of this document?  
 13 A. Correct.  
 14 Q. Is that a document that you would have given  
 15 out to developers?  
 16 A. Again, like I said, Sherrill was usually the  
 17 one that would provide this information to him.  
 18 Q. So at the point in time where a developer is  
 19 making inquiry to the company regarding service, the  
 20 initial information that was distributed would have come  
 21 through the office and not directly from you?  
 22 A. Correct.  
 23 Q. Mr. Kaveney, at some point in the process, did  
 24 Far West Water and Sewer Company verify whether the  
 25 developer's property was inside or outside of your

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1 C.C. & N.?  
 2 MR. CAPESTRO: For any particular property or  
 3 for all of them, as a general rule?  
 4 MR. CROCKETT: Let me back up and ask a  
 5 question.  
 6 Q. (BY MR. CROCKETT) First of all, do you  
 7 understand the terminology "C.C. & N." or Certificate of  
 8 Convenience and Necessity?  
 9 A. My understanding of C.C. & N. is that is the  
 10 area that the A.C.C. has approved for a utility company  
 11 to serve with water, sewer, or both.  
 12 Q. That's exactly right. Do you know whether a  
 13 utility that is regulated by the Arizona Corporation  
 14 Commission can provide service outside of its C.C. & N.?  
 15 A. I believe there's a way to do it, if I remember  
 16 right; but obviously, if this is gonna be a permanent  
 17 customer, you want -- to expand your area of C.C. & N.  
 18 would be the best way to do it.  
 19 Q. Okay. Did you consider -- when a new developer  
 20 came to the company and wanted to do a development, did  
 21 someone look to see whether that development is in the  
 22 C.C. & N. of Far West Water and Sewer Company?  
 23 A. Yeah. That was the first thing -- that plat  
 24 that I told you we would receive and I would review,  
 25 Dusty would look at the plat. He had a large map that

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1 had the shaded area of the C.C. & N., and he would assure  
 2 that that plat was within that area before he would say  
 3 it was okay to go.  
 4 Q. So if an area was outside of the C.C. & N.,  
 5 Mr. Thomas would have picked that up early on in the  
 6 process?  
 7 A. Yeah. That would have been right out of the  
 8 gate.  
 9 Q. And if you found that an area was outside -- if  
 10 you found that a development was outside of your  
 11 C.C. & N., what would have happened at that point?  
 12 A. Mr. Thomas would have dealt with that. That's,  
 13 again, more of the business side of things.  
 14 Q. During your tenure as general superintendent,  
 15 did Far West Water and Sewer Company ever expand its  
 16 C.C. & N.?  
 17 A. Not that I'm aware of.  
 18 Q. Just to make it clear for the record, it was  
 19 not your responsibility to verify whether a development  
 20 was inside or outside of the company's C.C. & N.  
 21 A. My responsibility, no.  
 22 MR. CAPESTRO: When you talk about C.C. & N.,  
 23 are you just using it generally, both for water and  
 24 sewer?  
 25 MR. CROCKETT: I'm using it generally for water

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1 and sewer.

2 MR. CAPESTRO: Okay.

3 Q. (BY MR. CROCKETT) Do you know, Mr. Kaveney,  
4 does the company have different areas of its C.C. & N. for  
5 water and for sewer?

6 A. We have one unique area that sits between  
7 9 1/2 and 10E, which is a half-mile strip, which we  
8 provided sewer service, but this water was provided by  
9 the City of Yuma.

10 Q. Did you have any areas where Far West Water and  
11 Sewer provides water but not sewer service?

12 A. Yeah. A vast majority of the older areas of  
13 Far West are the F.M.E.'s, Foothill Mobile Estates. All  
14 these older areas were on septic tank prior to 1994, when  
15 they started building wastewater plants.

16 Q. Would Mr. Thomas have been aware of these  
17 distinctions in the areas that you serve?

18 A. Yes.

19 Q. If a customer -- strike that.

20 If a developer came to the company and asked  
21 for water and wastewater service, then Mr. Thomas would  
22 have had to have verified that the company had the  
23 C.C. & N. for both water and wastewater for that  
24 development?

25 A. Correct.

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1 Q. You mentioned the map on the wall that showed  
2 your C.C. & N. area. Who maintained that map?

3 A. Dusty Thomas.

4 Q. Was that map generated by a computer system?

5 A. No. It was -- I think Jacobson Engineering was  
6 the one that drew it. It was an older map.

7 Q. Was it a hand-drawn map or a computer-generated  
8 map?

9 A. Blueprint. It looked like a big blueprint is  
10 what it looked like.

11 Q. And were the areas of water and sewer service  
12 identified differently on that map?

13 A. Yes, they were. They were shaded  
14 differently.

15 Q. Do you remember what color the water area was  
16 shaded?

17 A. I don't believe there was color differential.  
18 I believe it was a difference between maybe a light shade  
19 or a section of hash mark lines.

20 Q. But the point is: There was a way, when you  
21 looked at the map, to identify if an area had water or  
22 wastewater or both?

23 A. Correct.

24 Q. How often did you look at that map?

25 A. Not too often. You pretty well get to know the

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1 area out here, and you don't really need to look at it.  
2 You learn, from this street to this street, this is what  
3 we have.

4 Q. Then is it accurate to say that when a  
5 developer came to you, requesting service, most times,  
6 you or Mr. Thomas would have known, right off the top of  
7 your head, whether that area was inside or outside of the  
8 C.C. & N.?

9 A. Knowing if it was inside or outside the  
10 C.C. & N. would have been Mr. Thomas. Knowing if there  
11 was water or sewer out there physically would have been  
12 me.

13 Q. Okay. Was Mr. Thomas diligent in making the  
14 determination whether an area was inside or outside of  
15 the C.C. & N.

16 A. I wouldn't be able to judge him on that.

17 Q. Now, Mr. Kaveney, when a developer requests  
18 water and sewer service from the company, how do you  
19 determine whether the company has sufficient capacity to  
20 serve that new development?

21 A. The right way to do it is you go back in your  
22 file and you see how many current customers you have  
23 connected, how many future customers you have already  
24 approved, and how many developments that aren't even out  
25 there but have been approved and are ready to go.

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1 You add all of those up and come up with a  
2 number, minus what the plant rated capacity is, which  
3 gives you our free capacity.

4 Q. You said that's the right way to do it?

5 A. Mm-hmm.

6 Q. Did the company always -- did Far West Water  
7 and Sewer Company always do it that way?

8 A. I did not always do it that way.

9 Q. And why would you not have done it -- strike  
10 that.

11 Explain to me why you would not have gone  
12 through that process for a particular development.

13 A. When I first got here, Dusty explained to me --  
14 again, this was my first private utility. Dusty  
15 explained to me how this is a little bit different than  
16 working for the cities and the counties, how the water  
17 and the Sewer Company and the developers all help each  
18 other out.

19 It's like the infamous snowball that keeps  
20 rolling and getting bigger, and everybody does their part  
21 to keep the ball rolling.

22 As an example, I have a plant with X amount of  
23 capacity, and we know that Joe and Bill have already  
24 turned their plans in; but we know Joe and Bill are gonna  
25 be a ways out because Joe and Bill have this over here

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1 they're doing.

2 Well, then Sam comes up and says, "I'd like to  
3 do this project here." So you can give them capacity,  
4 true capacity, what have we got connected right now, and  
5 kind of put the guy that was there, put him in front of  
6 the line. You would try to help him out.

7 The only way these developers can get their  
8 paperwork to get started was to receive all these  
9 documents from Far West to get their ground-breaking.

10 I did that -- it was a favor. I did that for a  
11 few developers. They would assure me, "Hey, I know this  
12 is the deal, but if you can go ahead and give me the  
13 capacity, I can get moving.

14 "It's gonna be six months or a year. I won't  
15 have phase 2 ready for three more years, but I really  
16 need this because I want to roll the dice and pour all my  
17 pads and get things going, because looking down the road,  
18 I want to be ready to sell when you're ready for me." A  
19 lot of that went on.

20 Q. When you did that, did that potentially cause a  
21 situation where you had overcommitted the capacity at a  
22 particular wastewater treatment plant?

23 A. It had the potential to. Again, we're all  
24 trying to work together. Far West is trying to expand  
25 plants, build plants, get developers going so they can

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1 grow. We're all trying to grow together.

2 The thing that can and did blow up in our face  
3 is when you have somebody like A.D.E.Q. step in and stop  
4 the ball. It's inertia. When an entity like A.D.E.Q.  
5 puts a block in front of the ball, everything comes to an  
6 abrupt stop. That's what happened to me out at the  
7 Palm Shadows wastewater plant.

8 Q. Did Far West Water and Sewer Company have any  
9 written policies regarding the issuance of capacity  
10 letters?

11 A. Written policies, no.

12 Q. Now, you mentioned that this was done as a  
13 favor to developers to try to keep developers  
14 developing?

15 A. Yeah.

16 Q. Did this result in a situation where some  
17 developers were given preferential treatment over  
18 others?

19 A. Absolutely not.

20 Q. So when you were doing this type of a favor,  
21 how did you balance the interests of the current  
22 developer, versus someone who may have already been given  
23 a capacity letter that's building out a development?

24 A. How would I prioritize them?

25 Q. Yes.

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1 A. A lot of it had to do with how big of a  
2 subdivision they're building. Are you gonna build a  
3 small one? Are you gonna build a big one?

4 Unfortunately, a lot of this was word of mouth.  
5 I had a lot of trust in the developers. When they would  
6 tell me, "I only want to build this many houses," it was  
7 like "Go ahead and give me this capacity letter."

8 Obviously, I received that remark from a few  
9 developers; and all of a sudden, we're getting  
10 overcapacitated at the plant, and these guys are waving  
11 their letter. "We're good to go."

12 It's kind of like the favor that came back and  
13 bit me for trying to help them.

14 Q. Was Mr. Thomas aware that this process was  
15 occurring within the company?

16 A. Yes. That's -- again, like I said earlier,  
17 he's the one that told me, "This is how the ball turns.  
18 The developers need us, we need them, and everybody grows  
19 together."

20 Q. Was Ms. Capestro involved in this as well?

21 A. No.

22 Q. Did she understand?

23 A. No. At that time, she was not. Again, this  
24 was a favor that we were doing to developers.

25 Q. This policy -- or I shouldn't say, "policy"

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1 because I don't think -- well, let me ask: Was it the  
2 company's policy to handle things this way?

3 A. No. The company would never put a policy into  
4 effect like that.

5 Q. This was the practice at the time?

6 A. Correct.

7 Q. And did you ever discuss with Ms. Capestro this  
8 practice?

9 A. When Ms. Capestro came on board, I believe, in  
10 early '06, I pretty well filled her in on everything that  
11 was going on; the mode of operation, the way things were  
12 going, the troubles we were having, the troubles we  
13 encountered.

14 So I would say yeah, about the first part of  
15 '06, she became aware of what was going on.

16 Q. Prior to her getting involved, did she have  
17 much involvement with the company, from your  
18 perspective?

19 A. From me dealing with her, no.

20 Q. Do you know whether she had much involvement  
21 dealing with Mr. Thomas?

22 A. I can only assume that she did, because she was  
23 part of the board, and Dusty reported to the board, and  
24 she was president of Far West Water and Sewer.

25 Q. Was Ms. Capestro president of Far West Water

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1 and Sewer when you joined the company as general  
 2 superintendent?  
 3 A. I assume so, yes. I never seen any changing of  
 4 the guards while I was here, so that's why I make my  
 5 assumption.  
 6 Q. You mentioned Palm Shadows, specifically?  
 7 A. Mm-hmm.  
 8 Q. What was the problem with capacity at the  
 9 Palm Shadows Wastewater Treatment Plant?  
 10 A. Percolation. Palm Shadows treatment plant is a  
 11 percolation plant. The wastewater goes into a pond and  
 12 soaks down into the ground and re-enters the aquifer. As  
 13 things were progressing, things were growing, things were  
 14 okay.  
 15 We started having troubles with our ponds  
 16 filling up. Typically, they would dry out in the summer  
 17 because our winter visitor population would go away.  
 18 That first scare we had, I had a company come out and  
 19 core the bottom of the pond. Come to find out, we had  
 20 30 feet of clay.  
 21 Q. When was the first scare?  
 22 A. I believe it was 2004.  
 23 Q. Do you remember what time of year?  
 24 A. December. I believe it was December.  
 25 Q. What company came out and cored the bottom of

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1 moving.  
 2 Q. You said you thought that occurred in December  
 3 of 2004?  
 4 A. I believe so.  
 5 Q. How confident are you in that date?  
 6 A. Not very. I'd have to look at my old  
 7 records.  
 8 Q. Could it have occurred earlier than that?  
 9 A. I don't think so. I hired on in December. I  
 10 was battling winter visitors.  
 11 Q. I think you said, "December." You actually  
 12 hired in September of '03.  
 13 A. So December of '03, I don't think it happened  
 14 then, because I was having other issues. I believe it  
 15 was the year after that, that we actually --  
 16 Q. You're pretty confident that it was December  
 17 that this came up?  
 18 A. I believe so.  
 19 Q. And you think it was 2004?  
 20 A. I think so. That was the original flag.  
 21 Q. What happened at that point?  
 22 A. That summer, we extended the ponds, made them  
 23 larger.  
 24 Q. That summer would have been the summer of  
 25 2005?

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1 the pond?  
 2 A. I don't recall.  
 3 Q. Is it that point in time that you identified a  
 4 problem with the pond?  
 5 A. Yes. I was wondering, why isn't this thing  
 6 perking down? I'm a California boy in the desert. I  
 7 thought this was sand all the way down.  
 8 In talking with some of my employees who are  
 9 local here, who used to work construction, they told me  
 10 there are veins of actual clay out here.  
 11 Q. What were the problems with the pond and the  
 12 percolation?  
 13 A. It wasn't percolating. They used clay to line  
 14 ponds to prevent percolation. We're sitting on this  
 15 percolation plant with a big ball of clay that's in  
 16 excess of 30 feet deep.  
 17 As far as Far West goes, we had our plant  
 18 design. We had all the numbers, everything from the  
 19 engineers saying this plant is good to go; it will perk  
 20 this much.  
 21 The design is 200,000 gallons a day. When you  
 22 fit 110,000 -- I thought I had -- I think we breached  
 23 twice one year. The pond overflowed twice that one year  
 24 at 110,000. There was a problem. That was one of the  
 25 blocks that hit the ball, that stopped the ball from

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1 A. Correct. We expanded the ponds, made them  
 2 larger. It helped tremendously. Toward the end of that  
 3 period, we were having issues with the ponds filling up  
 4 again. We noted that there was a lot of pond sludge,  
 5 gunk that was assisting in the fouling of the ponds.  
 6 The summer of -- I guess it would be '06. In  
 7 the summer of '06, we created a pond off to the side  
 8 where -- the effluent would go to that pond first and  
 9 anything that would build up would go into that pond.  
 10 From there, it would cross over and go into the  
 11 ponds that we stretched out and expanded even further.  
 12 We were stretching and expanding these ponds to try to  
 13 keep up with the flow, at the same time dealing with  
 14 A.D.E.Q., trying to get permits to change our process.  
 15 Q. Did you obtain the appropriate permits from  
 16 A.D.E.Q. to make these changes?  
 17 A. We were attempting to.  
 18 Q. Did any of the changes get made before the  
 19 appropriate permits were issued?  
 20 A. Any of the changes, no.  
 21 Q. And what was the outcome of your efforts to  
 22 make the ponds percolate?  
 23 A. We didn't ever overflow them. We were holding  
 24 on but barely.  
 25 Q. Does the Palm Shadows Wastewater Treatment

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1 Plant work today?

2 A. As far as I know, it does. I've been gone for  
3 two years.

4 Q. Now, I want to get back to a topic we were  
5 discussing earlier about capacity. Say, for example, you  
6 needed a new well. Would the developer ever be asked to  
7 pay for that additional capacity?

8 A. That was an issue that I had brought up early  
9 on, when I first got here. Knowing now, yeah, there are  
10 procedures where the developer puts money up front. He  
11 pays capacity fees, connection fees, all the above. I  
12 know that's appropriate. When I first got here, it  
13 didn't seem like that was going on.

14 In the City of Solvang, it would cost you \$7500  
15 to plug into the sewer system.

16 Q. Did that start to change? You said that was  
17 not going on when you got here. At some point after you  
18 joined the company, did that change?

19 A. I know it changed when I started dealing with  
20 Ms. Capestro, right away.

21 Q. And you started dealing with Ms. Capestro in  
22 2006?

23 A. Yeah.

24 Q. So prior to 2006, was Far West Water and Sewer  
25 requesting capacity fees from developers?

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1 A. I don't believe so, no, because I had inquired  
2 about why we weren't.

3 Q. And when you inquired, when was that?

4 A. I inquired when I first got here in '03, when I  
5 was being introduced to the company. I was surprised  
6 they didn't have all these things.

7 There were some -- Dusty took care of all that,  
8 but there were some developers that were paying, like,  
9 950 bucks a lot.

10 I know when Mr. Householder showed up and asked  
11 about his subdivision, he came and asked me, "Hey, I want  
12 to do this subdivision. What do you think it would cost  
13 me?"

14 "Well, let me get back to you."

15 So I talked to Dusty and told him the scenario,  
16 and Dusty says -- well, I didn't know if Dusty was  
17 working on getting these connection fees, if it was in  
18 the works or whatever. Again, that's the business side  
19 of it.

20 I asked Dusty, "This guy, he said he's not  
21 gonna hold us to the fire. He just wants an idea because  
22 he wants to know how much this thing will cost him."

23 Dusty gave me some numbers, and I threw a  
24 letter together and gave it to Brian and said, "This is  
25 probably what you're looking at."

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1 Q. Was that the process of all the developers at  
2 the time?

3 A. No. When Brian came to us, he wasn't Jacobson  
4 or one of the gigantic developers. My understanding is  
5 Spartan Homes used to build a house here and there, and  
6 this was his first subdivision, so we wanted to help him  
7 out as much as we could.

8 Q. You said that you sent him a letter telling him  
9 that there were these connection fees or capacity fees  
10 that he had to pay. I think you mentioned \$900?

11 A. Yeah, something like that. He wanted a  
12 ballpark on what it would cost. Dusty said, "It will  
13 probably cost him this much," and I said okay, and I ran  
14 with it.

15 Q. My question to you is: Were those charges  
16 being asked of other developers at the time?

17 A. Yeah. I think that's where Dusty got it. I  
18 believe the Jacobson company was paying.

19 Q. And do you know how the charge was  
20 calculated?

21 A. No. Again, Dusty took care of all the business  
22 part of things.

23 Q. Do you know if that capacity charge -- was that  
24 addressed in the main extension agreement?

25 A. No. The main extension agreements that I dealt

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1 with were just payback on the capital you put in the  
 2 ground.  
 3 Q. Is it fair to say that the main extension  
 4 agreement covered the infrastructure that you were  
 5 building within your development?  
 6 MR. CAPESTRO: Who's "you"?  
 7 MR. CROCKETT: Okay.  
 8 Q. (BY MR. CROCKETT) If a developer signs a main  
 9 extension agreement with the company for water service,  
 10 does the main extension agreement require the developer  
 11 to build the water distribution system for his  
 12 development?  
 13 A. Yes. That's typically how it went.  
 14 Q. And if the same developer requests sewer  
 15 service, does he then enter into a sewer service main  
 16 extension agreement that requires him to build the  
 17 collection infrastructure within his development?  
 18 A. I don't know about the verbiage on that.  
 19 We don't require a developer to come in and  
 20 build anything. If he wants to build a subdivision, he's  
 21 gonna need sewer to support his housing.  
 22 My understanding is: We say, "Build your  
 23 subdivision. Do what you gotta do, whatever tie-in you  
 24 gotta do. When you get it all done, let us know, and  
 25 we'll pay you back for what you put in the ground," based

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1 on connections and other stuff that I didn't get involved  
 2 with.  
 3 Q. Do you know whether Far West Water and Sewer  
 4 Company had a tariff on file with the Arizona Corporation  
 5 Commission that authorized the company to charge a  
 6 capacity fee for water service or sewer service?  
 7 A. I have no idea about that.  
 8 I know when Jay Shapiro took over, it was a lot  
 9 more complex and complicated than what I was dealing  
 10 with, because there was main line extension agreements  
 11 and main extension agreements, and they sound the same,  
 12 but they're two different worlds.  
 13 Q. But is it your understanding that the on-site  
 14 water distribution system would have been covered under a  
 15 main extension agreement?  
 16 A. A main line extension agreement, yeah.  
 17 Q. And the same for sewer, that the on-site sewer  
 18 collection infrastructure would have been covered under a  
 19 separate sewer main extension agreement?  
 20 A. Correct. That is just whenever the developer  
 21 put capital in the ground, we agreed to pay them back  
 22 based on criteria over a certain period of time.  
 23 Q. When we talk about these capacity fees, those  
 24 would be charges to pay for off-site infrastructure?  
 25 A. Correct.

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1 Q. For example, if the company needed to provide  
 2 or build additional storage or a well, those things would  
 3 be paid for out of these capacity charges?  
 4 A. Correct.  
 5 Q. And was there an agreement signed with the  
 6 developer that said, "Here's what the capacity fees are  
 7 for your development"?  
 8 A. I never got involved in that part of it. That  
 9 was Dusty.  
 10 Q. Did you ever see any kind of an agreement like  
 11 that, that covered capacity charges?  
 12 A. No. The numbers I gave Brian in this case were  
 13 the numbers Dusty told me.  
 14 Q. But you did write letters to developers that  
 15 said, "Here is what the capacity fee is for you"?  
 16 A. I don't recall writing letters, as far as  
 17 capacity fees.  
 18 Q. You mentioned that you wrote a letter to  
 19 Mr. Householder?  
 20 A. That was a favor. That was a buddy handshake,  
 21 "Can you do me a favor?" I'm seeing a small developer,  
 22 and I helped the guy out. I gave it to him in writing so  
 23 he would have something to hand his engineer.  
 24 Q. So generally, you didn't provide that type of a  
 25 letter to a developer?

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1 A. No.  
 2 Q. Did Mr. Thomas provide that type of a letter to  
 3 a developer?  
 4 A. I don't know.  
 5 Q. I'm trying to understand, if you know, how a  
 6 developer knows what he has to pay for these fees.  
 7 A. My understanding was it's decided between Dusty  
 8 and the developer to come to an agreement.  
 9 Q. Did that agreement vary from development to  
 10 development?  
 11 A. I have no idea.  
 12 Q. Could some developers, for example, pay \$900  
 13 per connection, where other developers paid \$300 per  
 14 connection?  
 15 A. That could quite be possible, depending -- you  
 16 have to look at the wastewater treatment plant itself.  
 17 What type of a process are we talking about?  
 18 I'll give you one extreme to the other. For an  
 19 example, if I'm doing pond treatment somewhere, it's not  
 20 gonna cost something to expand capacity on that pond.  
 21 If I'm running a Zenon ultra-filtration M.B.R.  
 22 unit that I'm gonna have to expand, it's gonna cost  
 23 hundreds of thousands of dollars to make more capacity  
 24 for that house.  
 25 So house A, if you're on my pond system, it's

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1 gonna cost you next to nothing. If you're going to my  
 2 M.B.R. system, it's gonna cost you a fortune.  
 3 Q. If you happen to be a developer that's building  
 4 a subdivision that's gonna be served by the pond system,  
 5 your capacity for sewer could be next to nothing?  
 6 A. Yeah.  
 7 Q. And if you happen to be a developer that has a  
 8 subdivision that goes to a more expensive wastewater  
 9 plant, his capacity fee could be much higher?  
 10 A. Correct.  
 11 Q. Did you ever see examples of that when you were  
 12 at Far West?  
 13 A. No. I'm basing that off my knowledge on the  
 14 wastewater industry and what it costs to build these  
 15 plants and run these plants.  
 16 Q. Is it your testimony that Mr. Thomas was the  
 17 person for the company that was involved in deciding what  
 18 dollars came from what developer?  
 19 A. Prior to Mr. Shapiro stepping in and taking  
 20 this thing over, yes.  
 21 Q. And did -- wouldn't Mr. Thomas have needed to  
 22 talk to you to come up with these numbers?  
 23 A. No, not at all.  
 24 Q. Did he develop those numbers on his own?  
 25 A. Well, the dollars and cents, yeah. That was

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1 the business part of it. I had nothing to do with the  
 2 business.  
 3 If we're gonna expand the wastewater plant -- I  
 4 was out in the field making sure the plant got built and  
 5 nobody got hurt and got it started up and running. I had  
 6 nothing to do with the dollars and cents or negotiations.  
 7 Q. Wouldn't Mr. Thomas have come to you to say,  
 8 "Here's this developer. What are we gonna need to build  
 9 to serve this new development?"  
 10 A. Yeah. That would be under the capacity. "Do  
 11 we have room?" Basically Dusty was a good old boy.  
 12 "Yeah, we got room."  
 13 Okay. Good."  
 14 That was it. It was very informal.  
 15 Q. But the discussions with the developer over how  
 16 much the developer might have to pay Far West Water and  
 17 Sewer for capacity was a discussion that occurred with  
 18 Mr. Thomas and the developer?  
 19 A. I would assume, yes.  
 20 Q. And you said that you had a discussion about  
 21 that with Mr. Householder, but that was done more as a  
 22 favor to Mr. Householder?  
 23 A. Yeah. He came up to me and said, "Hey, man.  
 24 Do me a favor. I want to do this. What do you think  
 25 it's gonna cost me?"

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1 Q. That wasn't your ordinary job duty to do that  
 2 type of --  
 3 A. No, not at all. I think myself and my field  
 4 foreman -- I believe it was on a Saturday. It was our  
 5 day off. We went out and measured some pipe to see how  
 6 far he had to go to connect into the sewer system.  
 7 Q. Did Ms. Capestro get involved in the decision  
 8 about how much money was going to be assessed to  
 9 different developments for capacity?  
 10 A. That would have taken place, I believe, in '06,  
 11 yes. It was 2006 when she got involved.  
 12 Q. Did you ever have discussions with any person  
 13 at Far West Water and Sewer about implementing a uniform  
 14 hook-up fee?  
 15 A. Just the conversation I had with Dusty, coming  
 16 from California and the cities. We're used to "Plug into  
 17 my sewer. It's 7500 bucks."  
 18 "How come we don't have that here?"  
 19 Q. That discussion you had with Mr. Thomas  
 20 occurred shortly after you arrived at the company?  
 21 A. Yeah. It would have been October of 2003.  
 22 Q. Did you ever have any discussions about a  
 23 hook-up fee with the board of directors?  
 24 A. No.  
 25 Q. Did you ever have any discussions about a

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1 hook-up fee with Ms. Capestro?  
 2 A. Briefly, when Dusty left and she came on board,  
 3 and I was briefing her on where we're at and what's going  
 4 on and what our problems were.  
 5 I had brought it up to her about "I don't know  
 6 what's going on with connection fees. I'm used to this  
 7 way."  
 8 At that time she was getting outside  
 9 consulting. I believe Mr. Shapiro was getting involved  
 10 because of the A.C.C. issue, so everything was being  
 11 resolved at a much higher level.  
 12 Q. That discussion you had with Ms. Capestro  
 13 occurred sometime in 2006?  
 14 A. Yeah.  
 15 Q. Did that discussion with Ms. Capestro follow  
 16 closely the discussion you had with Mr. Thomas when you  
 17 first arrived?  
 18 A. Yeah. It was just a plain, simple inquiry; "By  
 19 the way, you are aware we don't do this? I don't know  
 20 why." That's when she got Coriolis and Jay Shapiro and  
 21 all kinds of stuff going on with A.C.C.  
 22 Q. Did you recommend to Ms. Capestro that the  
 23 company should have a hook-up fee?  
 24 A. Absolutely.  
 25 Q. Did you recommend to Mr. Thomas, in 2003, that

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1 Far West Water and Sewer should have a hook-up fee?  
 2 A. Absolutely. The utility company can't afford  
 3 to build wastewater plants for developers. The money we  
 4 get from revenues only pays for the day-to-day  
 5 operations.  
 6 Q. Now, Mr. Kaveney, when you met a developer on a  
 7 line extension agreement, did you actually prepare the  
 8 agreement?  
 9 A. Yeah. It was pretty much a boilerplate. You  
 10 just changed the dollars and cents and the name of the  
 11 company.  
 12 Q. Did you actually do that yourself on the  
 13 computer?  
 14 A. Yes.  
 15 Q. So Ms. Phillips did not do that?  
 16 A. No.  
 17 Q. And how many main extension agreements did you  
 18 prepare when you were at Far West Water and Sewer?  
 19 A. Oh, Lord. I want to say 30. I don't know why,  
 20 but "30" rings a bell to me, for some reason.  
 21 Q. Does that include water and sewer agreements?  
 22 A. Mm-hmm.  
 23 Q. So were there 30 water, 30 sewer; or was there  
 24 a total of 30 water and sewer?  
 25 A. I don't recall. I just remember there was a

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1 lot of them.  
 2 Q. Did anyone else at the company prepare main  
 3 extension agreements?  
 4 A. No.  
 5 Q. So during the period of time that you worked  
 6 for Far West Water and Sewer Company, you would have  
 7 prepared the main extension agreements?  
 8 A. Mm-hmm.  
 9 MR. CAPESTRO: I believe there's a qualifier on  
 10 there when he mentioned that from 2006, Jay Shapiro was  
 11 handling them.  
 12 THE WITNESS: Right.  
 13 Q. (BY MR. CROCKETT) So up until the time that  
 14 Mr. Shapiro got involved, you were the primary person  
 15 responsible for preparing main extension agreements?  
 16 A. Yes.  
 17 Q. Where did you prepare those?  
 18 A. In my office.  
 19 Q. Where was your office located?  
 20 A. Right behind you was my last office. I  
 21 actually had a place over across from the water plant,  
 22 and I started out over at the H&S building. I bounced  
 23 around two or three times.  
 24 Q. Did you ever meet with developers in your  
 25 office to prepare a main extension agreement?

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1 A. No. I will usually prepare the extension  
 2 agreement and chase them down, hand it to them, have them  
 3 sign it and get it back to us and turn it in to the  
 4 accounting department -- or Sherrill, I think, was the  
 5 one I gave it to.  
 6 Q. And when you prepared those agreements you  
 7 worked off a boilerplate form?  
 8 A. Yeah. I took a boilerplate form. The  
 9 information I would get from the developer's engineer,  
 10 the dollars and cents, I would take those numbers and  
 11 insert those in the appropriate places.  
 12 Q. When those agreements were completed and  
 13 signed, you kept a copy of them in the files of the  
 14 company?  
 15 A. Yes.  
 16 Q. And you testified earlier that you were  
 17 responsible for sending those agreements to the Arizona  
 18 Corporation Commission for approval?  
 19 A. Yes.  
 20 Q. Did you mail those agreements to the  
 21 commission?  
 22 A. Yes, I did.  
 23 Q. Did you prepare a cover letter with an  
 24 agreement?  
 25 A. I'm sure I did.

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1 Q. Now, Mr. Kaveney, I noticed from the files that  
 2 I've looked at, there are a large number of line  
 3 extension agreements that were dated in January of 2005.  
 4 Was there anything unusual that happened in  
 5 January of 2005 that caused the company to submit -- or  
 6 to sign a large number of line extension agreements?  
 7 A. If my memory serves me correct, it was  
 8 discovered that there were a lot of line extension  
 9 agreements that never got generated from before I was  
 10 here.  
 11 If I recall, Dusty had found those and said --  
 12 it was a discovery. "We never did extension agreements  
 13 for these developers. We need to get them going."  
 14 Q. Did you prepare those agreements for developers  
 15 that had not previously been prepared?  
 16 A. Yes. That was when I was over at the water  
 17 plant. I distinctively remember that because there were  
 18 a lot of them all at once.  
 19 Q. How did you prepare -- strike that.  
 20 With respect to those agreements that were  
 21 prepared late, was the water and sewer infrastructure  
 22 already constructed?  
 23 A. Yeah. I went back and pulled the developer  
 24 files and got all the data from their files to compile  
 25 the agreement itself.

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1 Q. So these agreements were -- they were prepared  
2 after the fact?  
3 A. Yeah. For the most part, we had all the  
4 required materials here that were required to generate  
5 the agreement. The agreement just never got done.  
6 Q. Did you have an attorney review any of the  
7 agreements that you prepared?  
8 A. No.  
9 Q. Did Mr. Thomas review any of the agreements  
10 that you prepared?  
11 A. No.  
12 Q. Did Ms. Capestro review any of the agreements  
13 that you prepared?  
14 A. Prior to Jay Shapiro, no.  
15 Q. So you were, is it safe to say, a one-man  
16 operation, with regard to main extension agreements?  
17 A. Under a delegated authority, yes.  
18 Q. Mr. Kaveney, are you aware of a commission --  
19 of an Arizona Corporation Commission rule that requires  
20 that water main extension agreements be submitted for  
21 approval?  
22 A. Yes.  
23 Q. Do you know whether sewer main extension  
24 agreements need to be submitted to the Arizona  
25 Corporation Commission for approval?

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1 A. No, they do not.  
2 Q. With respect to water main extension  
3 agreements, how did you know that those agreements needed  
4 to be submitted to the commission for approval?  
5 A. I believe I called the A.C.C. and talked to  
6 them, just trying to learn the Arizona -- that would have  
7 been earlier on.  
8 Q. Did anyone at Far West Water and Sewer tell you  
9 that water main extension agreements needed to be  
10 submitted to the Arizona Corporation Commission?  
11 A. Dusty, when he handed me the task, said, "Do  
12 these. This is where they need to go. This is how you  
13 do it."  
14 Q. Did that occur when you first arrived at the  
15 company, or did that occur later?  
16 A. Shortly after.  
17 Q. And you mentioned that you discovered -- well,  
18 strike that.  
19 You mentioned that Mr. Thomas discovered a  
20 number of developments that did not have line extension  
21 agreements?  
22 A. Right.  
23 Q. Do you recall when he made that discovery?  
24 A. That, I don't recall. I just remember that  
25 period of time where the discovery was made, and I had to

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1 generate a whole bunch of them.  
2 Q. Did your preparation of those late agreements  
3 happen fairly soon after Mr. Thomas told you that they  
4 needed to be generated?  
5 A. Yeah. Right away.  
6 Q. So if there are a large number of agreements  
7 that were dated in January of 2005, is it safe to assume  
8 that the discovery was made shortly before January of  
9 2005?  
10 A. Yeah, if not January 2005. I don't know what  
11 the dates are. I'm very proactive, so --  
12 Q. As soon as you knew that there were missing  
13 line extension agreements, you prepared them?  
14 A. Yes.  
15 Q. Got them signed?  
16 A. Yes.  
17 Q. And submitted them to the Arizona Corporation  
18 Commission?  
19 A. Correct.  
20 Q. Do you know, Mr. Kaveney, what the penalty is  
21 for not submitting a line extension agreement to the  
22 Arizona Corporation Commission?  
23 A. No.  
24 Q. Did Far West Water and Sewer review engineering  
25 plans that were prepared by the developers for their

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1 water and wastewater infrastructure?  
2 A. Yeah. We would look over the plans.  
3 Q. Did you require that those plans be approved by  
4 the company before the developers could proceed with  
5 construction of the water and wastewater  
6 infrastructure?  
7 A. Again, we relied pretty much on the engineer's  
8 stamp to say that it meets specification.  
9 Q. You were not reviewing engineering plans in the  
10 office before the infrastructure was built?  
11 A. We would get the plans, and we'd go over and  
12 see where the water lines are and if there was any  
13 questionable sizing or anything, but nothing of an  
14 engineer level, no.  
15 Q. Would you get the plans before the water and  
16 wastewater infrastructure was built?  
17 A. Not all the time. Again, there was a lot of  
18 good-old-boy stuff that went on out here. Everybody  
19 helped each other get a move on.  
20 Q. Is that what you mean by the expression  
21 "good-old-boy stuff"?  
22 A. Yeah. I look you in the eye, shake your hand,  
23 and you're not gonna take me to court, and together we're  
24 gonna work through this. If we fall, we both fall, and  
25 we help each other up. I shake your hand, and I don't

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1 need anything in writing.  
 2 Q. Mr. Kaveney, what documentation did Far West  
 3 Water and Sewer require in connection with a line  
 4 extension agreement?  
 5 A. I don't recall the complete list. I know it  
 6 was X amount of copies of the plans, the engineer's  
 7 design report, the cost breakdown, the water capacity  
 8 assurance from A.D.W.R., approved A.D.E.Q. forms for  
 9 water and sewer.  
 10 Q. Does that refer to an approval to construct?  
 11 A. Yes.  
 12 Q. Did Far West Water and Sewer do any of the  
 13 inspection of the water and sewer infrastructure that was  
 14 built, or was that all done and arranged for by the  
 15 developer?  
 16 A. That was all on the developer. Again, we  
 17 strictly went off of the engineer's stamp.  
 18 Q. Do you recall whether Far West Water and Sewer  
 19 Company ever rejected infrastructure that was built by a  
 20 developer because it did not meet the company's  
 21 standards?  
 22 A. I don't recall. I don't believe so.  
 23 Q. Is there a warranty period associated with the  
 24 construction that is performed by the developer?  
 25 A. I'm not sure on that. That would be more of

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1 the business contractual stuff that Dusty would have  
 2 taken care of.  
 3 Q. When you were at the company, did you ever have  
 4 problems with infrastructure that was built by the  
 5 developers?  
 6 A. Minor stuff. Nothing that I can recall that  
 7 was major.  
 8 Q. Did you ever prepare a punch list for  
 9 construction that was built by the developers?  
 10 A. No. Not a developer, no.  
 11 MR. CAPESTRO: It doesn't look like you're  
 12 gonna finish by noon. Do you think you'll finish within  
 13 two hours after?  
 14 MR. CROCKETT: I'll have to. We've done a lot  
 15 of the plowing. We'll get finished in two hours.  
 16 Do you want to take a lunch break now?  
 17 MR. CAPESTRO: It seems appropriate.  
 18 (There was a lunch break taken at 11:56 a.m.  
 19 until 1:05 p.m.)  
 20 MR. CROCKETT: Back on the record.  
 21 Q. (BY MR. CROCKETT) Good afternoon, Mr. Kaveney.  
 22 Are you familiar with the development called  
 23 Sierra Ridge?  
 24 A. Yes.  
 25 Q. What do you know about Sierra Ridge?

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1 A. Sierra Ridge was a small subdivision. Brian  
 2 Householder was the developer. I know there's three  
 3 phases to it originally; Sierra Ridge 1, 2, and 3; and I  
 4 believe there was a commercial strip to it.  
 5 Q. Do you know whether the Sierra Ridge  
 6 development is within Far West Water and Sewer's C.C. & N.  
 7 for water?  
 8 A. To the best of my knowledge, yes.  
 9 Q. Do you know whether that development is within  
 10 Far West Water and Sewer's C.C. & N.'s for sure?  
 11 A. To the best of my knowledge, yes.  
 12 Q. Do you know a gentleman by the name of Rick  
 13 Stacks?  
 14 A. Yes, I do.  
 15 Q. How do you know Mr. Stacks?  
 16 A. Rick Stacks worked for Yuma County. He was  
 17 their environmental health guy. I used to work with Rick  
 18 quite a bit as far as odor complaints or any A.D.E.Q.  
 19 issues. He was kind of the environmental liaison, if you  
 20 would. I worked real close and real well with Rick.  
 21 Q. How often do you speak with him in any given  
 22 month?  
 23 A. Usually once or twice a month. Toward the end,  
 24 as the A.D.E.Q. started getting a little bit more -- we  
 25 spoke a lot more often.

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1 Q. Did you know him socially, or was the  
 2 relationship purely a professional relationship?  
 3 A. It was professional. We'd go off on some  
 4 socializing. We never met after work or had dinner or  
 5 nothing. We talked about golfing but never got around to  
 6 it.  
 7 Q. Did you ever speak to Mr. Stacks regarding the  
 8 Sierra Ridge subdivision?  
 9 A. The only time I remember talking to  
 10 Mr. Stacks -- and I know Brian wanted to get his  
 11 development up and going, and I know we were having  
 12 issues at Palm Shadows. The percolation ponds quit  
 13 perking. That ball I told you that everybody was  
 14 spinning together, all of a sudden, got stopped.  
 15 In trying to help Brian out with his  
 16 development, I believe I asked Rick -- inquired about  
 17 septic tanks; "Does Yuma County still allow septic  
 18 tanks?" I know this was our area of C.C. & N., but we'd  
 19 be willing to say, "Okay. If you'll let him move forward  
 20 with septic tank" --  
 21 Q. How did that discussion play out?  
 22 A. If I recall, Rick said that, yeah, that's  
 23 definitely a possibility, but it would have to be a  
 24 septic tank of a certain criteria, not your basic  
 25 fiberglass tank with a leach field. It was gonna have to

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1 be some new designed septic tank that has  
 2 nutrient-removal capabilities.  
 3 Q. Do you recall whether Mr. Householder was  
 4 involved in those discussions?  
 5 A. With me, yeah. We talked.  
 6 I first called Rick to get some background;  
 7 "Hey, is this okay?" and I mentioned it to Brian.  
 8 I said, "One option you do have is -- why don't  
 9 you go with septic. Maybe down the road, you can tie  
 10 into the sewer when the stuff gets finished; or if it's  
 11 okay, it's okay. But to get moving, to get houses built  
 12 and marketed, why don't you go with septic."  
 13 Q. Do you know whether or not Mr. Householder  
 14 proceeded down a path toward putting septic in his  
 15 subdivision?  
 16 A. All I know is he was gonna look into it. I  
 17 don't recall any septic tank ever being installed.  
 18 Q. Did Mr. Stacks ever ask you for Far West Water  
 19 and Sewer Company to serve the Sierra Ridge subdivision  
 20 with sewer?  
 21 A. I don't think Rick would have asked me if we  
 22 would serve them because it was already our area of  
 23 C.C. & N., and Rick wouldn't really get involved in our  
 24 business as far as that goes.  
 25 Rick was well aware of the Palm Shadows

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1 side.  
 2 Q. Do you know whether Sierra Ridge was ever  
 3 approved for construction with septic tanks?  
 4 A. I have no knowledge of that.  
 5 Q. Mr. Kaveney, if you would, turn to Exhibit 21,  
 6 which is tab 21 in your binder.  
 7 A. (Complying.)  
 8 Q. Exhibit 21 is a document, the caption of which  
 9 is partially obscured, but it appears to be a County  
 10 approval for construction of individual on-site  
 11 wastewater treatment facilities. Do you have that  
 12 document?  
 13 A. Yes.  
 14 Q. And this document is for Sierra Ridge  
 15 subdivision phase 1 and 2?  
 16 A. Mm-hmm.  
 17 Q. The total number of lots is 113?  
 18 A. Okay.  
 19 Q. Now, do you see this document is signed by  
 20 Mr. Stacks?  
 21 A. Yes.  
 22 Q. And what's the date of the document?  
 23 A. 10/8/04.  
 24 Q. So October 8th of 2004.  
 25 Now, up above, there's a handwritten notation

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1 problems because of all the A.D.E.Q. issues that were  
 2 going on. But as far as getting involved in agreements  
 3 between us and the developer, as far as going with septic  
 4 tanks or hooking up or whatever, he wouldn't have gotten  
 5 involved with that.  
 6 Q. Are you aware that there is a question about  
 7 whether the Sierra Ridge subdivision is within the  
 8 Far West Water and Sewer Company C.C. & N. for sewer?  
 9 A. No, I'm not.  
 10 Q. Is this the first time you've heard about  
 11 that --  
 12 A. Yeah.  
 13 Q. -- being potentially a question?  
 14 A. Yeah.  
 15 Q. As far as you know, it is within the sewer  
 16 C.C. & N. of Far West Water and Sewer?  
 17 A. Yeah. To my recollection, we had from 16E down  
 18 to 10E for water and sewer, 9 1/2E for sewer. We went  
 19 from -- County 14 to County 10, if I recall, was our  
 20 area.  
 21 The only areas that I don't think were  
 22 highlighted on that big map were the undeveloped areas  
 23 that were outlying. I would assume that Sierra Ridge  
 24 would be, because there was an established trailer park  
 25 right across 12E and other water customers on the other

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1 under "County comments." The last line of that  
 2 handwritten note is a little hard to read, but it appears  
 3 to me that it says, "Sewer is not available in the  
 4 foreseeable future." Do you see that?  
 5 A. Yes, I do.  
 6 Q. And next to that, it appears, is written the  
 7 initials R.S.  
 8 A. Correct.  
 9 Q. And would you assume that those initials are  
 10 Rick Stacks' initials?  
 11 A. Yes, I would.  
 12 Q. Do you know why Mr. Stacks would have written,  
 13 on October 8th, 2004, that sewer is not available in the  
 14 foreseeable future?  
 15 A. More than likely because of the issues we were  
 16 having at Palm Shadows, the percolation problems he was  
 17 well aware of, his involvement with A.D.E.Q. as far as  
 18 being the on-site environmental guy here in Yuma County.  
 19 As far as him stating that sewer is not  
 20 available within the foreseeable future, that's all an  
 21 interpretation. Is he talking the next year?  
 22 I know Brian was hot and heavy to get houses  
 23 going. So "foreseeable future" for Brian could be 2  
 24 weeks; "foreseeable future" for us, 20 years.  
 25 Q. Fair enough. This document, you mentioned

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1 that -- strike that.

2 Earlier, you testified that the issue with the

3 Palm Shadows plant came up in December of 2004?

4 A. Mm-hmm.

5 Q. This document is dated October of 2004. Does

6 that refresh your recollection at all? Could the sewer

7 issues have come up earlier at the Palm Shadows plant?

8 A. They could have, yeah. I don't recall. Like I

9 said, I've been away from this place for two years.

10 Q. Okay. This Exhibit 21, do you recall seeing

11 this before?

12 A. No.

13 Q. Is this the first time that you've seen this

14 document?

15 A. Yes. To the best of my knowledge, yes.

16 Q. Did you -- then, obviously, you never discussed

17 this document with Mr. Stacks?

18 A. This document, no.

19 Q. Now, Mr. Kaveney, if you would turn to tab 8,

20 which is Exhibit 8 to the binder -- in the binder that

21 you have. Would you take a moment and read that

22 memorandum?

23 A. Do you want me to read it out loud?

24 Q. No, just to yourself.

25 MR. CROCKETT: For the record, I'm looking at

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1 Exhibit 8 to the deposition, which is a memo from Mark

2 Kaveney to Dusty Thomas. The subject is Sierra Ridge.

3 The date is July 2, 2004.

4 THE WITNESS: Mm-hmm. I recall that.

5 Q. (BY MR. CROCKETT) Do you recall writing this

6 memo?

7 A. Yes, I do.

8 Q. What is the subject of the memo?

9 A. Palm Shadows, as far as Sierra Ridge, their

10 tentative plat.

11 Q. And it indicates that there's a problem with

12 Palm Shadows regarding capacity?

13 A. Correct.

14 Q. Now, this memo was dated July 2nd, 2004?

15 A. Correct.

16 Q. So again, when you said earlier that in

17 December, the clay issue came up in December of 2004 --

18 A. Right. It sounds like I was a year off in my

19 timing.

20 Q. You were pretty definitive that it was around

21 December.

22 A. Yeah.

23 Q. So could it have been December of 2003?

24 A. It sounds like it must have been, keeping in

25 mind that in December of '03, Palm Shadows consisted of

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1 three very small ponds, very shallow ponds, and they

2 weren't inseparable. They did not have isolation points.

3 There were three ponds, but they just flowed to

4 all three of them, which is not a good way to operate a

5 percolation pond.

6 Q. You've mentioned today Mr. Householder. Are

7 you referring to Brian Householder?

8 A. Yeah.

9 Q. How do you know Mr. Householder?

10 A. He came along, wanting to do a subdivision. I

11 might have dealt with Brian before that, maybe a home or

12 two, building a house out in our area.

13 Q. Are you aware that Mr. Householder is an owner

14 of a company called Spartan Homes and Construction, Inc.?

15 A. I know he's affiliated with it, yes.

16 Q. Did Mr. Householder request water service from

17 Far West Water and Sewer Company for the Sierra Ridge

18 subdivision?

19 A. Yes, he did.

20 Q. Did he also request sewer service for the

21 Sierra Ridge subdivision?

22 A. Yes, he did.

23 Q. When did you first speak to -- strike that.

24 Do you recall when you first spoke to

25 Mr. Householder about Sierra Ridge?

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1 A. I don't recall. I believe it was after this

2 because Sierra Ridge -- this would have been -- as I

3 explained earlier, we get the tentative plats, and I

4 review it and give it to Dusty. This would have been a

5 memo I gave to Dusty. Dusty was taking care of these

6 things first.

7 If I remember right, Brian was probably dealing

8 with Dusty first, and then Dusty started shifting this

9 stuff toward me.

10 Q. Do you remember whether your initial meeting

11 with Mr. Householder was by telephone or a

12 face-to-face?

13 A. More than likely, the phone. I'm sure he gave

14 me a call and said, "I have some questions for you."

15 Q. Did you ever meet with Mr. Householder in your

16 office?

17 A. Yeah. I believe he stopped by a couple times

18 to talk over some stuff.

19 Q. Do you remember dates of those meetings?

20 A. No.

21 Q. Do you keep a journal or a calendar that would

22 have the dates of those meetings?

23 A. No.

24 Q. Did the office keep a calendar for you that

25 would have the dates of those meetings?

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1 A. I don't believe so. That was one of my weak  
2 points. I never maintained an outlook or a calendar and  
3 still don't today.

4 Q. Is it safe to say that no one in the office did  
5 that for you?

6 A. I believe I asked Sarah, when she shifted over  
7 here, to keep track of the times I went to Phoenix,  
8 because we were going through some issues with A.D.E.Q.  
9 I just wanted some documentation on when I was going to  
10 Phoenix.

11 Q. But no one -- as far as you know, no one was  
12 keeping track of meetings that you had at the office?

13 A. No.

14 Q. And you don't believe any kind of record like  
15 that exists anywhere?

16 A. To my knowledge, no.

17 Q. And you indicated that you spoke to  
18 Mr. Householder by telephone?

19 A. Mm-hmm.

20 Q. What's your recollection regarding how many  
21 times you spoke to him by telephone?

22 A. I don't know; a handful. He'd call and ask,  
23 "Where are we at with -- how's the wastewater plant  
24 doing?"

25 I explained to him we're working diligently

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1 their construction. Maybe that would be considered  
2 unusual.

3 Q. Do you remember preparing a main extension  
4 agreement for the Sierra Ridge subdivision?

5 A. I don't know if I would have done that one or  
6 not. I may have. I've done a lot of them. That one in  
7 particular, I don't know.

8 I know when Jay Shapiro stepped in and took  
9 over that stuff, that was right -- it was right around  
10 that time. I don't know if I did one or Jay did one. I  
11 start going into confusion on line extension agreements  
12 and main line extension agreements. I'm a wastewater,  
13 water guy.

14 Q. Do you remember a meeting in your office with  
15 Mr. Householder where the two of you filled out the  
16 blanks on a main extension agreement?

17 A. On a main extension agreement? I wouldn't  
18 recall that. I usually did that on my own. It didn't  
19 come from the developer. It came from his engineer, who  
20 would supply me with the numbers. I never had a  
21 developer sit down with me and fill out a main line  
22 extension agreement.

23 Q. Mr. Kaveney, if you would, turn to tab 2 in the  
24 binder, which has been marked as Exhibit 2 to your  
25 deposition.

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1 with A.D.E.Q. to try to get some of this stuff resolved.  
2 I was trying to keep him well informed on our progress.

3 This happened in December of 2003. I stayed in  
4 constant communication with him, letting him know, "We're  
5 trying this. We're trying that. Things are looking  
6 better." When we enlarged the ponds, the initial  
7 consensus was great. We found percolation. We expanded  
8 them. We were gonna be okay.

9 Q. In your meetings with Mr. Householder, is there  
10 anything that stands out in your mind about any of those  
11 meetings?

12 A. As far as what?

13 Q. Anything unusual.

14 A. Nothing -- one's interpretation of "unusual,"  
15 but nothing out of the ordinary for us. We were, again,  
16 a small developer and a privately owned small public  
17 utility trying to work together.

18 We talked about options. At one point, Brian  
19 says, "If I have to, maybe I can build a wastewater  
20 plant, and we'll work something out. I just want to get  
21 my houses built."

22 I guess that would be unusual -- probably  
23 considered unusual for a sewer company to offer to give  
24 up some of its connection fees and allow a developer to  
25 throw septic tanks in their area so they can get on with

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1 A. Mm-hmm.

2 MR. CROCKETT: The document, for the record, is  
3 a Certificate of Approval to Construct Water Facilities  
4 for Sierra Ridge Number 1 and 2, dated December 9,  
5 2004.

6 THE WITNESS: Correct.

7 Q. (BY MR. CROCKETT) Have you seen this document  
8 before?

9 A. I had to have, if I generated a main line  
10 extension agreement. This is one of the items that are  
11 in the package that I talked about.

12 Q. So is it fair to say you would not have  
13 prepared a main extension agreement until you had this  
14 approval to construct?

15 A. I would have to have all the documents; and if  
16 my memory serves correct, we only had some of the  
17 documents. We were missing some. We didn't have  
18 everything required to put it together. I may have had  
19 this long before I had the rest of the stuff.

20 Q. Would you agree that this is one of the  
21 documents that Far West Water and Sewer required as part  
22 of the process to enter into a main extension  
23 agreement?

24 A. Yes.

25 Q. Would you turn now to tab 3, which is Exhibit 3

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1 to your deposition?

2 A. Mm-hmm.

3 Q. That is a document entitled, "Professional

4 Verification of General Permit Conformance for Sewage

5 Collection System." It's dated December 9, 2004. Do you

6 recall seeing that document before?

7 A. It may have come in with the mix of all the

8 other stuff, probably, so with the package.

9 Q. Let me back you up one exhibit, to Exhibit 2.

10 This Exhibit 2, the Certificate of Approval to Construct

11 Water Facility -- I answered my question. This applies

12 to the water infrastructure for the development; is that

13 correct?

14 A. Yes.

15 Q. And that's described in the project

16 description?

17 A. Correct.

18 Q. So that is what Mr. Householder was going to

19 construct, as far as a water distribution system, to

20 serve the Sierra Ridge number 1 and 2 subdivision?

21 A. Correct.

22 Q. Then Exhibit 3, what does this Exhibit apply

23 to?

24 A. It would be the sewage collection system.

25 Q. So this is the sewage collection system for the

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1 development, and I see that it's identified as Sierra

2 Ridge Number 1 and 2. Is that correct?

3 A. Correct.

4 Q. Again, this is another document that you would

5 require in order to enter into a main extension

6 agreement?

7 A. Mm-hmm.

8 Q. Turn to tab 4, which is Exhibit 4 to your

9 deposition. This is a document entitled, "Water Service

10 Agreement and Sewer Service Agreement." Do you see

11 that?

12 A. Yes, I do.

13 Q. And what does this agreement apply to?

14 A. This is letting the developer know that we are

15 going to provide him with water service and sewer

16 service. This document is required by the A.D.E.Q.

17 Q. And what subdivision does it apply to?

18 A. Sierra Ridge 1 and 2.

19 Q. Does it bear your signature?

20 A. Yes, it does.

21 Q. Is that your signature?

22 A. Yes, it is.

23 Q. And what is the date that you signed this

24 document?

25 A. January 28, 2005.

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1 Q. Do you remember meeting in our office with

2 Mr. Householder on or about January 28th, 2005, to sign

3 this document?

4 A. I don't recall, but I'm not gonna discount it,

5 either. He may have stopped in and said, "Can you sign

6 this so I can get it on its way?"

7 Q. Is this a form that a developer would bring to

8 you to sign, or is this a form that you would generate in

9 your office?

10 A. This typically comes from the developer. It

11 usually comes -- the engineer. The developer's engineer

12 will usually send this stuff to us.

13 Q. And the developer's engineer then asks you, on

14 behalf of the utility company, to sign the agreement?

15 A. Right. We may have had some blank ones laying

16 around here, but you're asking me a "typical" question.

17 Typically all this stuff comes from the engineer for a

18 developer.

19 Q. The second -- the bottom portion of this form

20 refers to the sewer service agreement?

21 A. Mm-hmm.

22 Q. So this covers both water and sewer for Sierra

23 Ridge 1 and 2?

24 A. Correct.

25 Q. If you would, Mr. Kaveney, turn to tab 4.

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1 A. (Complying.)

2 Q. Tab 5 is Exhibit 5 to your deposition. It is a

3 drinking water service agreement. Do you recognize this

4 document?

5 A. Yes, I do.

6 Q. What is the difference between the drinking

7 water service agreement, which is Exhibit 5, and the

8 water service agreement, which is Exhibit 4?

9 A. To the best of my knowledge and recollection,

10 this is probably a duplicate that wasn't required. I

11 think the form used in section 4 is for those areas that

12 we would have served water and sewer, and this document

13 that is in number 5 would have been for areas that we

14 served only water.

15 Now, looking at the dates, on the 28th, I

16 signed both of them. On the 29th, I signed a drinking

17 water service. Maybe Brian came in and said, "I'm gonna

18 go forward with the septic. Can you give me the water

19 service so I can get going?" That might have been the

20 scenario.

21 Q. Do you recall having that conversation?

22 A. Vaguely. I was working with Brian and trying

23 to help him out as much as I could.

24 Q. Now, under Exhibit 5, there is a second

25 document. If you would turn -- before we go there, on

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1 Exhibit 5, drinking water service agreement, does that  
2 document bear your signature?

3 A. Yes, it does.

4 Q. Mr. Kaveney, did anyone at Far West Water and  
5 Sewer ever sign your name to documents?

6 A. No, not that I'm aware of.

7 Q. Did anyone have authorization to sign your name  
8 to documents?

9 A. No.

10 Q. And does that appear to be your signature?

11 A. That is my signature.

12 Q. And then the second page is another drinking  
13 water service agreement for Sierra Ridge phase 1 and 2,  
14 but it bears a different date, October 1, 2004. Does  
15 that document bear your signature?

16 A. Yes, it does.

17 Q. Do you have any recollection as to why there  
18 are two documents that appear to address the same  
19 issue?

20 A. The only thing I can recall is back -- there  
21 was some confusion with forms. I know the form that's  
22 back in number 4 has both water and sewer on it. It may  
23 have been a situation where I signed this one and later  
24 found out we needed the other one.

25 There's a lot of things changing up during this

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1 time. On 10/1/04, I was relatively new to dealing with  
2 this stuff directly, so I may have issued the wrong form  
3 in the beginning, turned around and corrected it with  
4 number 4, and then turned around and issued number 5.

5 There was a lot of confusion; changing plans,  
6 changing minds. We were both trying to make this ball  
7 spin and make it work.

8 Q. Now, when you say, "a lot of confusion;  
9 changing plans, changing minds," are you referring to  
10 this project, Sierra Ridge, or is that a comment that  
11 applied more broadly to what was happening at the  
12 company?

13 A. Pretty much with Sierra Ridge, Brian was really  
14 trying to come up with a way that he could get his houses  
15 built and moving. He needed to get some cash flow, as he  
16 explained to me.

17 Him being the small developer, I really wanted  
18 to do everything I could do to help him. "Let's try  
19 this." "Well, that hit a wall." "Let's try this." "Do  
20 you think we can try that?"

21 I called Rick and said, "Is there any way we  
22 can do this?" I talked to Brian. "Go talk to the  
23 County. Maybe they'll let you do septic tanks." We were  
24 doing anything we could to help Brian get houses going.

25 Q. Turn now to tab 6, which is Exhibit 6 to your

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1 deposition. This document is identified as "Arizona  
2 Department of Environmental Quality Capacity Assurance  
3 for Sewage Collection System." Do you have that  
4 document?

5 A. Yes, I do.

6 Q. What is the project name identified in this  
7 document?

8 A. Sierra Ridge 1 and 2.

9 Q. And what does this document do?

10 A. That document is basically the sewage  
11 collection system. This document explains how much  
12 capacity is in the sewage collection system.

13 In other words, this would prevent somebody  
14 from tying a 24-inch gravity main into an existing 6-inch  
15 gravity main. We have to make sure that wherever you're  
16 gonna build on, the collection system itself can handle  
17 it.

18 Q. On this document, it identifies a design flow  
19 of .024 M.G.D. Do you see that?

20 A. Yes.

21 Q. What is .024 M.G.D.?

22 A. That would be the design flow that I would have  
23 got from Brian's engineer on what Sierra Ridge 1 and 2  
24 was gonna put out.

25 Q. Does that equate to 24,000 gallons per day?

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1 A. Correct.

2 Q. The wastewater from Sierra Ridge 1 and 2, at  
3 build-out, is estimated at 24,000 gallons per day?

4 A. According to his engineer, yes.

5 Q. And this figure would have been provided by  
6 Mr. Householder's engineer?

7 A. Correct.

8 Q. You would not have calculated this number?

9 A. No. I'm not an engineer.

10 Q. Would you have verified this number?

11 A. How could I? I'm not an engineer. How can I  
12 second-guess an engineer's calculations?

13 Q. So you relied upon the engineer to come up with  
14 this number?

15 A. Yeah.

16 Q. Under what is identified on the form as  
17 paragraph 2-a, "Downstream sewage collection system  
18 capacity," it identifies a number of .200 M.G.D., which I  
19 believe is 200,000 gallons per day?

20 A. That's correct.

21 Q. And what is 200,000 gallons per day?

22 A. That was the capacity of the wastewater  
23 plant.

24 Q. So that's the capacity at the plant?

25 A. Mm-hmm.

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1 Q. It says, "Capacity downstream from point where  
2 new system or expansion is connected?"  
3 A. Down the stream of our collection system is the  
4 plant.  
5 Q. And now, you are signing -- on section 3 of  
6 this agreement of the capacity assurance, you're signing  
7 a certification; is that correct?  
8 A. Mm-hmm.  
9 Q. Now, under the certification, you are  
10 certifying that the sewer collection system identified in  
11 item 2B can maintain the performance standards required  
12 under Arizona Administrative Code R18-9-E 301B for the  
13 increased flow from the proposed system or expansion  
14 identified in item 1A?  
15 A. Correct.  
16 Q. You said earlier that you are not an  
17 engineer?  
18 A. That's correct.  
19 Q. So how do you make that certification with  
20 regard to this data that you did not provide or verify?  
21 A. I'm looking at a total engineer's design of  
22 200,000 gallons. I'm looking at a new subdivision of  
23 24,000 that wants to plug into the tail end of it.  
24 I know what my flows were at the plant at the  
25 time. It's just a mathematical. If I'm flowing 100,000

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1 gallons and he wants to put 24,000 into it, do I have  
2 room? Yes, I do.  
3 Relying on the engineers, knowing what they're  
4 doing, I'm making a testament based on their engineered  
5 stamp of approval.  
6 Q. Okay. And how does the engineer know what the  
7 capacity is, under item 2A, at the Palm Shadows plant?  
8 A. They could get that capacity from the A.D.E.Q.  
9 in Phoenix. They could ask us. We do have copies of the  
10 design flows of the plants and their construction here at  
11 this facility. I can provide them with a number.  
12 Q. And the engineer, then, would rely upon that  
13 number that you provided them to complete this part of  
14 the form?  
15 A. Correct.  
16 Q. That is your signature --  
17 A. That, it is.  
18 Q. -- on the form?  
19 A. Yes.  
20 Q. And that's dated January 29, 2005?  
21 A. (No response.)  
22 Q. Let's clarify.  
23 Mr. Kaveney, is this your handwriting on the  
24 form?  
25 A. Yes, it is.

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1 Q. You filled this form out?  
2 A. Yes, I did.  
3 Q. And you would have relied upon someone else to  
4 provide the number .024 that goes to the box that says  
5 1A?  
6 A. That's correct.  
7 Q. And you would have provided the number yourself  
8 in box 2A?  
9 A. That's correct.  
10 Q. And that number is .200 M.G.D.?  
11 A. That's correct.  
12 Q. If you would now turn to tab 7.  
13 A. (Complying.)  
14 Q. Tab 7 is Exhibit 7 to Mr. Kaveney's deposition.  
15 It is a sewage treatment facility capacity assurance. Do  
16 you recognize this document?  
17 A. Yes, I do.  
18 Q. Did you prepare this document?  
19 A. Yes, I did.  
20 Q. That is your handwriting that appears on the  
21 document?  
22 A. Yes, it is.  
23 Q. And that is your signature at the bottom?  
24 A. Yes, it is.  
25 Q. The date of this document is January 29,

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1 2005?  
2 A. Yes, it is.  
3 Q. Now, this document identifies the development  
4 or proposed subdivision as Sierra Ridge 1 and 2; is that  
5 correct?  
6 A. That is correct.  
7 Q. And you have identified the sewage treatment  
8 facility for this development as Palm Shadows W.W.T.P.  
9 A. That's correct.  
10 Q. And you've also indicated or completed the  
11 blank on the form that says there is capacity at the  
12 Palm Shadows plant of .200 M.G.D.?  
13 A. Correct.  
14 Q. Now, Mr. Kaveney, in box 4 of the form, there  
15 is a number that says, "Total design flow connected to  
16 facility, .153 M.G.D."  
17 A. Correct.  
18 Q. What does that mean?  
19 A. That was my average flow to that wastewater  
20 plant.  
21 Q. At what point in time?  
22 A. At the point in time that I signed this  
23 document.  
24 Q. So on January 29, 2005, the Palm Shadows  
25 Wastewater Treatment Plant had an actual flow of .153

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1 M.G.D.?

2 A. Correct.

3 Q. And it has a signed and approved capacity

4 of .200 M.G.D.?

5 A. Correct.

6 Q. And we've already indicated, after looking at

7 Exhibit 6 to your deposition, that the Sierra Ridge

8 subdivision was going to add .024 M.G.D. to the

9 Palm Shadows treatment plant?

10 A. Correct.

11 Q. So again, doing the math here, you would

12 conclude that the Palm Shadows Wastewater Treatment Plant

13 has the capacity to handle this new subdivision?

14 A. Right.

15 Q. And we had this discussion earlier about the

16 certification; but you understood, when you signed this

17 document, that it would be submitted to Yuma County

18 and/or the Arizona Department of Environmental Quality?

19 A. Correct.

20 Q. And you understood that those governmental

21 bodies would rely upon the information that's contained

22 in this document?

23 A. Correct.

24 Q. At the time you completed this document, did

25 you believe this information was correct?

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1 A. I knew it was correct.

2 Q. And you wouldn't have put anything in here that

3 wasn't correct because of the penalties that are

4 specified at the bottom of the form?

5 A. True.

6 Q. And you understood those penalties existed?

7 A. Correct.

8 Q. Now, still in tab 7, Mr. Kaveney, there is

9 another sewage treatment facility capacity assurance

10 that's identified as KAV0015. Do you see that?

11 A. Yes, I do.

12 Q. And this document is dated January 29, 2005, as

13 well?

14 A. Correct.

15 Q. And it also applies to Sierra Ridge 1 and 2?

16 A. Correct.

17 Q. Now, in this document, what does it show as the

18 total design flow connected to the Palm Shadows

19 facility?

20 A. .180.

21 Q. Can you explain why this document has a

22 different number than the first document we looked at?

23 A. It's clear that somebody later changed the .024

24 and the .153 to read .051 and .180, because that is not

25 my writing.

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1 Q. Oh. It is not?

2 A. No, it is not.

3 Q. On this document, which writing is not your

4 writing?

5 A. Box 4, design flow, .051. Box 4 design flow

6 connected to the facility, .180. If you'll look at my

7 "5" in box 2 under the zip code 85367, and look at the

8 "5" in box 4, that is extremely different, as well as the

9 "5" that is in the phone numbers in box 2. That "5" is

10 extremely different.

11 Q. Do you know who would have changed this

12 information?

13 A. I would have no idea who or why.

14 Q. Did you authorize anyone to change this

15 information?

16 A. No, I did not. This is the first time I've

17 seen this document with those numbers.

18 Q. Let me ask you this: The signature at the

19 bottom of this document --

20 MR. CROCKETT: And I'll identify the document

21 for the record. It's KAV0015.

22 Q. (BY MR. CROCKETT) Is that your signature?

23 A. Yes, it is. I can assure you those numbers in

24 box 4 were entered after I signed this document. I would

25 not have signed the document with those numbers in it.

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1 Q. Why is that?

2 A. Because it wasn't the original plan. It

3 doesn't jibe with what was submitted to me before with

4 all the original plans. Everything before was showing

5 .024.

6 Q. Do you specifically recall the flow for Sierra

7 Ridge 1 and 2 was .024?

8 A. Just from reviewing these previous documents,

9 yeah.

10 Q. But based on those documents, it appears that

11 the document included with Exhibit 7, which is KAV0015,

12 that document was not consistent with the earlier

13 documents?

14 A. Correct.

15 Q. When you signed these capacity assurance forms,

16 did you keep a copy of them?

17 A. I believe there would have been a copy in the

18 main line extension agreement file.

19 Q. Do you specifically recall making copies of

20 capacity assurance documents after you signed them?

21 A. No. Sarah would have done that.

22 Q. So you would have signed the document, handed

23 it off to Sarah, and she would have put a copy in the

24 file?

25 A. Right.

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1 Q. And then she would have provided the original  
2 document back to the developer?  
3 A. Correct.  
4 Q. So Sarah handled that part of the process?  
5 A. Yeah.  
6 (Exhibit Number 24 was marked for identification  
7 and is attached to the original transcript of this  
8 deposition.)  
9 Q. (BY MR. CROCKETT) Now, Mr. Kaveney, I'll hand  
10 you a document that has been marked as 24 to your  
11 deposition. It's not in the binder. This document,  
12 Exhibit 24, is a letter from you to Brian Householder,  
13 dated July 9, 2004. Do you recall preparing this  
14 letter?  
15 A. Yes. I did.  
16 Q. Do you recall sending this letter to  
17 Mr. Householder?  
18 A. Yes, I do.  
19 Q. Now, turn, if you would -- we'll look at two  
20 documents together. Turn to Exhibit 8 to your  
21 deposition.  
22 A. Mm-hmm.  
23 Q. This is the memorandum that you wrote to Dusty  
24 Thomas on July 2nd, 2004. This document says -- and it's  
25 regarding Sierra Ridge.

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1 memo?  
2 A. Correct.  
3 Q. Then explain to me -- on July 9th, you write a  
4 letter to Mr. Householder, which is Exhibit 24, which  
5 says, "Dear Mr. Householder, Far West Water and Sewer,  
6 Inc., will provide sewer service to the Sierra Ridge  
7 proposed development and enter into a sewer service  
8 agreement after the following requirements have been met.  
9 Far West Water and Sewer, Inc., has assured Palm Shadows  
10 Wastewater Treatment Plant has adequate capacity for the  
11 proposed development." It also references disposal, the  
12 ability to dispose of the effluent.  
13 Why did you write this letter, indicating that  
14 you would serve his subdivision just seven days after you  
15 had written the memo to Mr. Thomas indicating there was  
16 not capacity there?  
17 A. Because this clearly explains what I was  
18 telling you earlier about how we were trying to help each  
19 other out, work together with one another.  
20 Talking to Brian, he's saying, "I really need  
21 these documents signed because I have to get these to my  
22 engineer, gotta go to the County for the permits. We're  
23 gonna be grading dirt, pouring slabs. It's gonna be  
24 forever before I put a drop of sewage into your system."  
25 What I did is I helped him out. Internally I

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1 It says, "The attached tentative plat is  
2 unsatisfactory due to the available sewage capacity that  
3 remains at the Palm Shadows W.W.T.P."  
4 A. Mm-hmm.  
5 Q. "Along with the already-committed sewage  
6 capacity, we are having serious issues with the effluent  
7 disposal capabilities." This memo obviously identifies a  
8 problem with the disposal?  
9 A. Correct. As I stated before, we had three very  
10 shallow percolation ponds.  
11 Q. It also references capacity. Is that a  
12 different problem or the same problem?  
13 A. Percolation rates are a capacity, how much a  
14 pond can handle in a day.  
15 Q. Okay. Maybe we're on the same page but don't  
16 know it.  
17 The plant could process the capacity that had  
18 been already committed for that plant; it's just that the  
19 effluent coming out the back end of the plant, you could  
20 not dispose of all that effluent?  
21 A. Right.  
22 Q. So there was capacity in the plant, but your  
23 disposal system was causing you problems?  
24 A. At that current time, yes.  
25 Q. And that's what you were referring to in this

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1 told Dusty, "We have a problem." The problem was we had  
2 three shallow ponds not capable of percolating. I had a  
3 game plan in my hand. We'll just expand the ponds.  
4 What I did here, because I gave Brian all the  
5 paperwork, putting my neck out so he could get his  
6 subdivision started, I followed up with this letter,  
7 actually, to protect myself because in this letter, it  
8 states, "We will serve you after these conditions have  
9 been met."  
10 Now, an A.D.E.Q. means of wastewater effluent  
11 disposal hasn't been met yet. This was -- I'm doing him  
12 the favor because I'm gonna give him all the favors, and  
13 I'll test that these capacities are there, sticking my  
14 neck out, trying to help the developer.  
15 And he goes on and goes his merry way, and I  
16 give him this letter to try to protect myself, saying we  
17 talked about it. The good-old-boy attitude; "I won't put  
18 a drop into your system for months on end."  
19 I generate this letter saying, "We will serve  
20 you." The intent-to-serve letter was a request of the  
21 County. The County wanted to start getting these. I  
22 said, "I'll give you this," but I did put in here "after  
23 these things have been met," and they were never met.  
24 Q. Did you provide Mr. Householder with a copy of  
25 your July 2nd, 2004, memo?

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1 A. No. This was an internal memo between me and  
2 my boss.  
3 Q. Did you ever provide a copy of this memo to  
4 anyone at Yuma County?  
5 A. No. Again, this was internal.  
6 Q. To make sure I have everything in, you didn't  
7 provide a copy of this to anyone at A.D.E.Q.?  
8 A. No.  
9 Q. Did you discuss this problem with  
10 Mr. Householder before you provided him with this letter  
11 on July 9, 2004?  
12 A. Yes, I did. I told Brian the situation we were  
13 in, what's going on. I told him what we'll try to do to  
14 improve it.  
15 That's when he assured me that there's nothing  
16 to worry about. "Go ahead and give me these forms so I  
17 can get my project started."  
18 I said, "Okay," because in my mind, again, the  
19 development grows, the sewer plants grow together. I'm  
20 hoping -- he's building his houses and we're building our  
21 sewer plant, expanding the pond, and hopefully everything  
22 will work out right, and it didn't.  
23 Q. In this scenario you're discussing with me, did  
24 you talk to Dusty Thomas about that at the time?  
25 A. Yes.

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1 to Units 1 and 2?  
2 A. Yes. To put it in black and white, I was  
3 fronting Mr. Householder these documents so he could get  
4 his County permits so he could get himself started so we  
5 could keep that developmental ball rolling, if you  
6 will.  
7 Q. In your mind, was there anything unlawful about  
8 doing that?  
9 A. Unlawful, no. I think, very gray. I think it  
10 was operating in the gray area. I did not write anything  
11 down that was not true.  
12 Q. What was it about this that you saw as gray?  
13 A. Again, the proper way to do this is to go back,  
14 and you find out all the connections that had been  
15 promised that could ever or will ever happen, and  
16 calculate your capacities that way. That's the proper  
17 way to do it.  
18 Q. And you're saying that was not done here?  
19 A. No.  
20 Q. If you would --  
21 A. What happens when you do that -- the proper way  
22 to do it, what happens and actually happened here to our  
23 section 14 plant is you build this 150,000-gallon-a-day  
24 treatment plant; and because of all these connections  
25 that you've added up, you end up having 5,000 gallons a

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1 Q. So is it safe to say that Mr. Thomas was in the  
2 loop on this plan?  
3 A. Yes.  
4 Q. Did you discuss the plan with Ms. Capestro?  
5 A. No.  
6 Q. Did you believe you had her authority to do  
7 business in this way?  
8 A. I worked directly for Dusty Thomas. I had  
9 nothing to do with Mrs. Capestro at that time.  
10 Q. It is fair to say you were not thinking about  
11 her during this process?  
12 A. No. I was working directly for my immediate  
13 superior.  
14 Q. Did you have Mr. Thomas's concurrence in this  
15 plan?  
16 A. Yeah. He trusted my judgment.  
17 Q. Mr. Kaveney, turn to tab 9, which is Exhibit 9  
18 to your deposition.  
19 A. Mm-hmm.  
20 Q. This is a series of documents all pertaining to  
21 Sierra Ridge Number 3. Do you see that?  
22 A. Correct.  
23 Q. I won't go through each of these documents with  
24 you, but does the same discussion apply to this Sierra  
25 Ridge Unit 3 that applied to the discussion with respect

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1 day go through. You can't sustain the wastewater plant.  
2 You end up going in violation because there's not enough  
3 nutrients or food or anything to treat wastewater.  
4 Q. Look at Exhibit 9 and go back to the sewage  
5 treatment facility capacity assurance. That's the  
6 document that's identified as KAV0020. Do you have  
7 that?  
8 A. Yes, I do.  
9 Q. Now, on that document in box number 4, it shows  
10 a total design flow connected to the facility of .153  
11 M.G.D.  
12 A. Identical to that number that was shown in  
13 Sierra 1 and 2.  
14 Q. Which you believe is the correct number?  
15 A. Right.  
16 Q. Isn't that -- that number of 153,000 gallons  
17 per day, isn't that the cumulative number of the  
18 committed capacity to the Palm Shadows Wastewater  
19 Treatment Plant?  
20 A. The number, when it says, "Total design flow  
21 connected to facility" -- and this is where I'm getting  
22 gray on you. On January 29, 2005, there was 153,000  
23 gallons per day connected to that wastewater plant. If  
24 you go back and --  
25 Q. Let me stop you there. I'll ask you a

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1 clarifying question. Is that 153,000 gallons per day  
 2 what was actually coming through to the plant at that  
 3 point in time?  
 4 A. Yes.  
 5 Q. So this number is not what would come to that  
 6 plant when everything connected to that plant is built  
 7 out?  
 8 A. Correct.  
 9 Q. That's where you say that you run into a  
 10 problem; you've got -- you've got a design and approved  
 11 capacity at Palm Shadows of 200,000 gallons per day,  
 12 correct?  
 13 A. Correct. That comes on your A.D.E.Q. permit.  
 14 Q. And by signing these capacity assurance forms,  
 15 you committed more capacity or more flow to this  
 16 Palm Shadows plant than 200,000 gallons per day?  
 17 A. Yes and no. If you look at Sierra Ridge 1 and  
 18 2, that has 153,000 with .024, to do it the right way,  
 19 you would show 177,000 and plus this .13 would be a  
 20 190,000 total, to do it the right way.  
 21 What I'm doing is: On this date, on January 29  
 22 of '05, I had 153,000 gallons connected to my facility.  
 23 He wanted to put in 13. The key to this is that number  
 24 plus that number cannot exceed this number here.  
 25 What I'm doing on January 29, I'm saying,

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1 Q. Did you ever discuss it with Rick Stacks?  
 2 A. No. The County is bound -- it's one of those  
 3 situations where they can't say yes. They cannot say  
 4 yes. We are trying to help the developer.  
 5 Q. Let me make sure we understand.  
 6 If the design flow of -- a hypothetical here.  
 7 If this box said .200 M.G.D., box number 4, and the  
 8 facility capacity is .200 M.G.D., the County would look  
 9 at that and say, "Well, then we can't connect Sierra  
 10 Ridge to this because there's no capacity?"  
 11 A. We're done. Right.  
 12 Q. So you elected to use the actual flow on this  
 13 particular date, January 29?  
 14 A. Correct.  
 15 Q. Then Mr. Kaveney, is it your testimony that on  
 16 January 29, 2005, that the committed flow at Palm Shadows  
 17 Wastewater Treatment Plant was higher than .153 M.G.D.?  
 18 MR. CAPESTRO: That's the operational flow  
 19 versus the connected flow?  
 20 THE WITNESS: Connected flow is your  
 21 operational flow.  
 22 MR. CAPESTRO: What's this one here?  
 23 THE WITNESS: I have to think about that one.  
 24 MR. CAPESTRO: I'm trying to clarify. I saw  
 25 operational flow versus connected flow, and I want to

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1 "Brian, I have 153,000 going through the plant. You're  
 2 wanting to put 13 in. Okay. You're good to go. Here  
 3 you go.  
 4 "Today I have 153,000 going to the plant. You  
 5 want to put 24 in. You're good to go," knowing that he  
 6 can't connect, which brings us up to that Exhibit 24,  
 7 stating -- I'm saying, "Brian, on this day, yes, you  
 8 can."  
 9 The reason I did that is to help Brian get his  
 10 paperwork from the County so he can break down, pour  
 11 cement, not put a drop in the system, backing it with  
 12 this letter of intent to serve saying, "I will do what I  
 13 said here as long as this is okay."  
 14 Q. Now, did the County get Exhibit 24? Is this a  
 15 document that the County gets?  
 16 A. Yes. That's a document that we would give the  
 17 developers because they would need to submit that to the  
 18 County in order to get the permits.  
 19 Q. So what would the County expect you to put in  
 20 that box number 4? Would they expect you to put the  
 21 committed flow at the plant or the actual flow on the  
 22 29th?  
 23 A. I would assume the committed.  
 24 Q. Did you ever discuss that with the County?  
 25 A. No.

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1 make sure we have a clear record.  
 2 MR. CROCKETT: Do we want to go off the record  
 3 for five minutes?  
 4 MR. CAPESTRO: Sure.  
 5 (Informal discussion off the record.)  
 6 MR. CROCKETT: We just had a brief  
 7 off-the-record discussion. I think we'll go back and  
 8 talk about a couple things that Mr. Kaveney has said and  
 9 clarify some things.  
 10 Q. (BY MR. CROCKETT) Mr. Kaveney, we happen to be  
 11 looking at Exhibit 9. It's the page identified as  
 12 KAV0020. We're looking at box number 4, which is  
 13 captioned, "Proposed subdivision or other project," and  
 14 the name here is "Sierra Ridge Number 3" with a design  
 15 flow of .013 M.G.D.  
 16 The question, Mr. Kaveney, to you, is: The  
 17 line which says, "Total design flow connected to  
 18 facility, .153 M.G.D.," what does that number represent  
 19 with regard to the Palm Shadows Wastewater Treatment  
 20 Plant?  
 21 A. That would represent the actual flow to the  
 22 plant plus some other subdivision that I may have had on  
 23 file, having committed that much more flow to the  
 24 plant.  
 25 Q. So as of January 29, 2005, which is the date of

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1 this document, the figure .153 M.G.D. would aggregate all  
2 of the committed flow to the Palm Shadows plant from all  
3 of the developments that had received a capacity  
4 assurance form?

5 A. Correct.

6 Q. And in box 3 under "Facility capacity," it  
7 identifies an operational flow of .092 M.G.D.; is that  
8 correct?

9 A. Correct.

10 Q. And what does that number represent?

11 A. That was the flow that was going through the  
12 plant on this day. That's what the flow through the  
13 plant was, operational flow.

14 Q. So looking at this form, one would conclude  
15 that there was capacity on January 29, 2005, for the  
16 Sierra Ridge Unit 3 subdivision in the Palm Shadows  
17 plant?

18 A. Capacity through the wastewater treatment  
19 plant, yes.

20 Q. Is there something else I'm missing?

21 A. Yeah. We were having issues with pond  
22 disposal. This capacity right here is the capacity of  
23 the wastewater treatment plant, the lift stations, the  
24 aeration basins.

25 Q. So on January 29th -- what I think you're

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1 ponds?

2 A. Correct.

3 Q. And that worked for a while?

4 A. Correct. It got us through another season.

5 Q. Through another winter season?

6 A. Yeah. No spills, no nothing.

7 Then the next summer we repeated it. We made  
8 them even longer, and we added one on the very end, and  
9 we incorporated that polishing pond.

10 We were doing everything we could to where the  
11 pond section -- the disposal section of this wastewater  
12 plant would handle what the plant was designed for, again  
13 relying completely on engineers and their stamps and  
14 seeing their percolation rates are what they are, which  
15 clearly, they weren't.

16 Q. We're gonna move on.

17 Tab 10, which is Exhibit 10 to your  
18 deposition --

19 MR. CROCKETT: For the record, this is a  
20 chlorine residual test.

21 Q. (BY MR. CROCKETT) Mr. Kaveney, have you seen  
22 this document before?

23 A. Yes, I have.

24 Q. Do you specifically remember seeing this?

25 A. Yes.

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1 saying is that on January 29th, you knew that, although  
2 you signed this document, the plant couldn't really do  
3 this?

4 A. I knew that we were -- in January, we were  
5 heading toward summer. We were heading toward reduced  
6 flows. I was gonna have a window of opportunity to  
7 extend ponds, expand ponds, in hopes to handle the rest  
8 of this flow.

9 Q. And if you couldn't, then, handle the rest of  
10 the flow by the summer with some kind of a fix, what did  
11 you think was gonna happen?

12 A. I had no idea. I figured we'd have to start  
13 hauling sewage out of there or something.

14 Q. Did you know that the developers would have a  
15 problem -- strike that.

16 Did you know that the developers connected to  
17 the Palm Shadows plant would have a problem if you  
18 couldn't fix the disposal problem the coming summer?

19 A. Oh, absolutely.

20 Q. And were you able to fix the disposal problem  
21 the coming summer?

22 A. Yes, temporarily.

23 Q. And did you then have a problem again?

24 A. Yes, we did.

25 Q. And the temporary fix was to expand the

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1 Q. What is this document?

2 A. Whenever the developer puts in a drinking water  
3 system, they are required to disinfect the piping because  
4 it's been exposed to the elements.

5 They typically put a hot shot of chlorine in  
6 there to elevate the parts per million to above 250, I  
7 believe it was. They let it soak for 24 hours. When  
8 they're done, they open up a blow-off valve and they blow  
9 the stuff out.

10 The County inspector comes at that time, and he  
11 samples the water that's being blown out to assure that  
12 chlorine residual is above greater than 200 parts there.

13 Q. And what subdivision is covered by this  
14 chlorine residual test?

15 A. Sierra Ridge subdivision. No phases are  
16 determined.

17 Q. What's the date of the test?

18 A. March 29 of '05.

19 Q. Does this mean that the water distribution  
20 system for the Sierra Ridge subdivision was in place by  
21 the 29th of March 2005?

22 A. One would assume so, yes.

23 Q. Based on the fact that they were testing?

24 A. Yeah.

25 It's hard, because this does not specify phase

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1 1, 2, or 3. It could be one common distribution system  
2 where this would work. This may be for phase 3 only. It  
3 could be for phase 1 or 2 only. It's really hard to say.

4 Q. Is this one of the documents that you would  
5 look for as part of a line extension agreement?

6 A. Yes.

7 Q. Would you generally have signed a line  
8 extension agreement before you construct the  
9 infrastructure, or did that come after?

10 A. Typically, no. You wait until you get all of  
11 your data in and then fill out the line extension  
12 agreement.

13 Q. So for most of the line extension agreements  
14 that you were involved with, the infrastructure was  
15 constructed before the agreement was signed?

16 A. I can't answer that accurately.

17 I can accurately say that I would generate a  
18 main line extension agreement when I got all the data  
19 from the engineer.

20 Q. But not necessarily test results from the  
21 system?

22 A. No. I believe the checklist had a test result,  
23 so yeah, it will have been in the ground.

24 Q. So tab 11, which is Exhibit 11 to your  
25 deposition, is a document from Agri, A-g-r-i, dash,

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1 Trend, LLC. It is a microbiological analysis. It  
2 identifies the sampler name as "Sierra Ridge subdivision,  
3 lot number 85." The date of it document is  
4 March 28, 2005. Do you see that?

5 A. Mm-hmm.

6 Q. What is this document?

7 A. After the County certifies the line has been  
8 properly chlorinated, you'll take a sample of the water  
9 and test it. That ensures that the disinfection did  
10 work.

11 Q. This is a test that is run on the water  
12 distribution system?

13 A. Correct.

14 Q. Do you remember seeing this document?

15 A. Yeah.

16 Q. Specifically for Sierra Ridge, you do?

17 A. Yes.

18 Q. Tab 12, Mr. Kaveney, is Exhibit 12 to your  
19 deposition. This is a document that's entitled, "Water  
20 Line Pressure Test Verification." It is for Sierra Ridge  
21 subdivision phase 1.

22 A. Mm-hmm.

23 Q. And do you recall seeing this document?

24 A. Yes. This came in with the engineer's  
25 report.

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1 Q. What is the date of the document?

2 A. 4/5/05, signed 4/8/05.

3 Q. And the information at the bottom of the form  
4 says, "Entire system was tested at one time, no leakage  
5 observed."

6 Did you ever discuss this with Mr. Galindo, who  
7 was the engineer that submitted it?

8 A. No.

9 Q. Tab 13, which is Exhibit 13 to your deposition,  
10 it is a document that is identified -- the second page of  
11 the document is identified as "Engineer's Certificate of  
12 Testing." Do you see that?

13 A. Yes, I do.

14 Q. And this is for Sierra Ridge subdivision  
15 phase 1?

16 A. Correct.

17 Q. And it is dated April 8, 2005?

18 A. Mm-hmm.

19 Q. What does this document do?

20 A. I have no idea.

21 Q. Will you take a look at it and tell me.

22 A. To me, this is the engineer certifying that the  
23 tests were performed and they were okay.

24 Q. Is this a document that you required as part of  
25 the process of obtaining a line extension agreement?

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1 A. Yeah. I believe this was one page of many that  
2 came in the stack of information that we requested.  
3 Again, I'm not an engineer. It does me no good to  
4 second-guess this stamp right here. If something goes  
5 wrong, we go after the stamp.

6 Q. Did Far West Water and Sewer have an engineer  
7 on its staff?

8 A. No.

9 Q. None of the 35 employees had an engineering  
10 certification?

11 A. No. They were all A.D.E.Q.-certified  
12 operators.

13 Q. Tab 14, Exhibit 14 to your deposition, these  
14 are a series of documents that are called "Low-pressure  
15 Air Tests for Sierra Ridge Unit 1"?

16 A. Correct.

17 Q. The testing date is identified as March 31,  
18 2005, and April 5, 2005. Do you see those?

19 A. Yes, I do.

20 Q. What are these documents?

21 A. This is the engineer testing that the pressure  
22 tests on the sewage gravity collection system were okay,  
23 that we wouldn't have any problems with leaks or  
24 infiltration, exfiltration.

25 Q. Are there any other tests that are performed on

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1 the sewer system?

2 A. It depends. You can run camera tests if you

3 want. You can run a whiffle ball and flush if you want.

4 There's a lot of different ways to test.

5 Q. Did Far West Water and Sewer Company require

6 any of those tests?

7 A. It was pretty well open, optional. Whatever

8 the engineer feels comfortable -- if he feels comfortable

9 doing a pressure test, that, a year from now, it's not

10 gonna come back and bite him, that's fine.

11 If he feels good with doing a reflective test,

12 as long as he feels comfortable with it, that's fine.

13 Q. Once again, you relied entirely on the

14 certification from the engineer?

15 A. Absolutely.

16 Q. Do you recall seeing this information with

17 regard to Sierra Ridge?

18 A. I'm sure I looked at it and flipped through and

19 seen all the "Pass" signs and filed it away.

20 Q. Would you ordinarily, as part of your job,

21 review the documentation that comes in with regard to a

22 specific project?

23 A. Are you referring to the documents that I

24 received from the developer's engineer?

25 Q. Yeah.

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1 Take, for example, Sierra Ridge. This

2 documentation we've been looking at, would you have

3 generally looked at all of that documentation when it

4 came in?

5 A. Briefly. I would not have read it all.

6 Again, pressure tests, I would have made sure

7 that everything had a "pass" on it. Titles of documents,

8 I had a check-off sheet. Chlorine residual test.

9 Everything's good. The package goes to Sarah. She

10 copies it. Off it goes.

11 Q. Did you personally do that verification, or did

12 you ever delegate that to anyone else?

13 A. I did it.

14 Q. So for Sierra Ridge, you would have done

15 that?

16 A. Correct.

17 Q. And, in fact, you testified that you did do

18 that for Sierra Ridge?

19 A. Right.

20 Q. Tab 15, which is Exhibit 15 to your deposition,

21 this document is a Certificate of Approval of Sanitary

22 Facilities for Subdivision. It refers to Sierra Ridge

23 phase 1 and 2, lots 1 through 113.

24 Do you recognize this document?

25 A. Not really.

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1 Q. Are you familiar with certificates of

2 approval?

3 A. Some, not all.

4 Q. Do you know what this document does?

5 A. No. It doesn't have my signature on it. I

6 don't know.

7 This could be something that the engineer sent

8 in to A.D.E.Q. and they gave it back, or it goes to the

9 County. I have no idea. If this document were in a pile

10 of paperwork that came back from the engineer, it could

11 have been in the pile of paperwork.

12 Q. The term "Certificate of Approval of Sanitary

13 Facilities for Subdivision," is that familiar to you?

14 A. No. Not that verbiage, no.

15 Q. Tab 16, which is Exhibit 16 to your deposition,

16 is an approval of construction for Sierra Ridge Number 1

17 and 2, dated April 12, 2007. Have you seen this document

18 before?

19 A. I don't believe so. I usually see the approval

20 to construct.

21 Q. You know what, you were gone by April 12, 2007,

22 weren't you?

23 A. Yes, I was.

24 Q. So you would not have seen this document

25 before?

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1 A. Right.

2 Q. Are you familiar with what an approval of

3 construction is?

4 A. No. I'm assuming that the County is accepting

5 what he put on the ground as okay.

6 Q. Mr. Kaveney, now I'd like you to turn to tab

7 17, which is Exhibit 17 to your deposition. This is a

8 letter on Far West Water and Sewer, Inc., letterhead that

9 is dated April 14, 2005. Do you recognize this letter?

10 A. Yes. This was a boilerplate letter that

11 developers were required to have to give to the County to

12 move forward with their project.

13 Q. Did you prepare this letter?

14 A. Yes, I did.

15 Q. Is that your signature that appears on the

16 document?

17 A. Yes, it is.

18 Q. Do you specifically remember preparing this

19 letter?

20 A. I'm sure I did. It's my signature, and I used

21 to prepare them for all the developers.

22 Q. Would you have prepared this on your

23 computer?

24 A. Yes.

25 Q. So this would not have been prepared for you by

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1 someone else?

2 A. No.

3 Q. And when you signed this letter, would you hand

4 it off to Sarah Thomas -- Sarah Phillips to be mailed

5 out?

6 A. A lot of times the developers would want to

7 come in and pick it up themselves. Sometimes the

8 engineers would pick them up.

9 Q. Would you have kept a copy of this letter for

10 the file?

11 A. Yeah.

12 Q. Have you had a chance to read this letter since

13 we've been talking?

14 A. No.

15 Q. Take a moment and read through it.

16 A. (Complying.)

17 Okay.

18 Q. I'm interested in the second paragraph, which

19 says, "All necessary documents, test results, and

20 as-built drawings have been received by Far West Water

21 and Sewer, Inc., and as such, Far West Water and Sewer,

22 Inc., accepts the completed improvements into the water

23 and wastewater system. Utility services can be requested

24 for all lots as needed."

25 A. Correct.

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1 Q. Do you see that?

2 A. Yeah.

3 Q. This is for Sierra Ridge Units 1 and 2?

4 A. Right.

5 Q. Was that statement a true statement on

6 April 14, 2005?

7 A. No.

8 Again, here we go. I'm trying to help Brian

9 out, giving him a letter before I received all the

10 documents, test results, and as-built drawings from his

11 engineer so he can move forward with his project.

12 The statement that "utility services can be

13 requested for all lots as needed," that's very true.

14 There's nothing in there that guarantees he will get his

15 request granted. It says that he can request. There's

16 no guarantee of approval.

17 Q. Someone reading this letter, would they assume

18 from reading this that if a customer requested service to

19 a lot, that the company would serve that lot?

20 A. It depends on who you're talking to.

21 Q. Do you think that Yuma County had -- this

22 letter is addressed to Yuma County, correct?

23 A. Mm-hmm.

24 Q. Do you think Yuma County will conclude that

25 from reading this letter?

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1 A. Again, it depends on who you talk to. Some of

2 the people in the County would know, with our situation

3 that was going on, you can request it, but there's no

4 guarantee you'll get it.

5 Q. So do you believe that the County, then,

6 understood what Far West Water and Sewer Company was

7 doing in order to facilitate the development process?

8 A. Probably not, no. Again, that's where I put my

9 neck out and went in the gray area to try to help

10 developers like him on their word to me, saying, "Don't

11 worry about it. I just want to move dirt and get

12 concrete, and the County won't let me do nothing until I

13 get this."

14 It's very gray wording; again, arguably so.

15 You can request. You're assuming, "If I can request, I

16 get it."

17 And I'm saying, "I won't say you're gonna get

18 it."

19 Q. Was that your intent in drafting it that way?

20 A. Yes. I had to present something that would

21 help the developers get where they needed to go to help

22 them, yet have enough verbiage in there to hopefully

23 cover myself and the company from any litigation as far

24 as this letter here.

25 Yeah, we will serve you if -- it's what they

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1 call the fine print. This says here that you can request

2 it. There's no guarantee of approval. It's the way we

3 had to operate. That's the way the developers and the

4 utility company grew together. Dusty said, when I first

5 got here, that's how it worked.

6 Q. Is it safe to say that you and Mr. Thomas were

7 of the same mind on how this was working within the

8 company?

9 A. I believe so. Me and Dusty wanted to see the

10 Foothills succeed. We wanted to see our water and sewer

11 company grow. We wanted to see the developers succeed.

12 A developer has to have a wastewater plant in

13 order to build. We have to be able to provide that plant

14 for them and operate it for them. It's definitely a

15 joint venture.

16 (Exhibit Number 23 was marked for identification

17 and is attached to the original transcript of this

18 deposition.)

19 Q. (BY MR. CROCKETT) Let's talk about capacity --

20 go back to capacity reservation fees. I'll hand you what

21 has been marked as Deposition Exhibit 23 to your

22 deposition. This is a letter dated January 8, 2004, to

23 Mr. Brian Householder from Mark Kaveney. Do you recall

24 this letter?

25 A. Yes, I do.

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1 Q. Did you prepare this letter?  
 2 A. Yes, I did.  
 3 Q. Do you remember if you signed this letter?  
 4 A. Yes, I did.  
 5 Q. Would a signed copy of this letter been placed  
 6 in the file?  
 7 A. No.  
 8 Q. Why is that?  
 9 A. Because -- I mentioned this earlier on. This  
 10 was back when Brian was talking to me about his  
 11 subdivision. He wanted to know how much this is gonna  
 12 cost. "I'm not gonna hold you to it. I just need a  
 13 ballpark figure."  
 14 Okay. Let me help the guy out. I went and  
 15 talked to Dusty. "The guy is trying to get an overview.  
 16 He's not gonna hold our feet to the fire."  
 17 Dusty said, "Tell him this and this for  
 18 planning purposes." So he would have something, I threw  
 19 a letter together for him that he can give to his  
 20 engineers so they can do their calculations.  
 21 The reason I did not keep a file of it is this  
 22 was a personal favor.  
 23 Q. Let me ask you about that. I'm curious why you  
 24 view this as a personal favor. It seems to me that if a  
 25 developer comes to a utility company and says, "How much

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1 is it gonna cost me to receive service from you?" that  
 2 the utility company is obligated to give that customer an  
 3 estimate.  
 4 A. To my knowledge, again, this was not a -- what  
 5 you're getting at is I would have received a letter from  
 6 Spartan Homes saying "We request the following."  
 7 Far West would follow -- what you're leading  
 8 toward -- and say, "Here you go."  
 9 This was Brian talking to Mark. "Dude, what's  
 10 it gonna be?"  
 11 "Let me check it out." "Dusty, what do you  
 12 think?"  
 13 "Tell him this."  
 14 "There you go, Brian. What about them  
 15 Chargers?" It was really laid back. That's why I  
 16 consider it a personal thing.  
 17 I received nothing on Spartan Homes'  
 18 letterhead. There was nothing official about it. I did  
 19 put it in writing so he would have something to give to  
 20 his engineer.  
 21 Q. The letter identifies a sewer capacity fee of  
 22 \$950 per lot and a waterline tap fee of \$900 per lot?  
 23 A. Mm-hmm.  
 24 Q. Did you have anything to do with coming up with  
 25 those two numbers?

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1 A. No.  
 2 Q. Was that Mr. Thomas?  
 3 A. That's who I got the numbers from.  
 4 Q. And do you know how Mr. Thomas calculated those  
 5 numbers?  
 6 A. No.  
 7 Q. Do you know whether those numbers were based on  
 8 any analysis that he did?  
 9 A. No.  
 10 Q. No, you don't know; or no, they weren't based  
 11 on analysis?  
 12 A. I do not know. I don't have any idea. I asked  
 13 Dusty a verbal question. He gave me a verbal answer. I  
 14 put the numbers that I heard verbally from Dusty on a  
 15 piece of paper for Brian.  
 16 Q. Do you remember putting this type of  
 17 information in a letter to any other developer that you  
 18 worked with?  
 19 A. No, I don't recall.  
 20 Q. Do you remember quoting sewer capacity fees of  
 21 \$950 per lot to any other developer?  
 22 A. No. I never quoted anybody any capacity fees  
 23 or anything of the sort. This was a direct question from  
 24 a developer informally to me, and I responded to him, I  
 25 thought, informally.

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1 Q. So this was the one time you did that. I think  
 2 you said that you did not get involved in the area of  
 3 capacity fees for water and sewer?  
 4 A. Right.  
 5 Q. That was Mr. Thomas?  
 6 A. Right.  
 7 Q. This was the one time when you did do a letter  
 8 to a developer that outlined what those fees were?  
 9 A. Yes.  
 10 Q. You don't know -- you don't know, do you --  
 11 strike that.  
 12 Do you know what the company's authority is for  
 13 imposing a capacity fee like these in your letter?  
 14 A. No. Again, this was a guy that I knew of who  
 15 built a house around the Foothills every now and again.  
 16 He decided to take on a small subdivision. I was trying  
 17 to help the guy out. That's all I was trying to do.  
 18 Q. Turn, if you would, Mr. Kaveney, to tab 18,  
 19 which is Exhibit 18 to your deposition. This is a letter  
 20 dated October 8, 2006, to Brian Householder from Mark  
 21 Kaveney. Do you recognize this letter?  
 22 A. Yes.  
 23 Q. Is that your signature at the bottom of the  
 24 letter?  
 25 A. Yes, it is.

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1 Q. And did you prepare this letter?  
 2 A. Yes, I did.  
 3 Q. Did you prepare this letter on your computer?  
 4 A. Yes, I did.  
 5 Q. And I notice that on most of the correspondence  
 6 we've looked at, there was Mr. Householder's name but no  
 7 address. So obviously, these were letters that you  
 8 didn't put in the mail?  
 9 A. Brian usually came and picked all the stuff up  
 10 or had Francisco come by and pick it up.  
 11 Q. This letter on October 8th of 2006, says, "Dear  
 12 Brian, I am in the midst of generating a main line  
 13 extension agreement for you regarding Sierra Ridge 1 and  
 14 2."  
 15 Given that all of the infrastructure for the  
 16 subdivision, at least the 113 lots, appears to have been  
 17 constructed between January and March of 2005, why did  
 18 you not prepare a main extension agreement until October  
 19 of 2006?  
 20 A. If you read in paragraph 2, it says, "I notice  
 21 I am missing some of the required documents to complete  
 22 the agreement." Evidently I didn't have everything I  
 23 needed from him.  
 24 Q. What was it that caused you to pick this up in  
 25 October 2006 and start working on it?

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1 you, how then did you --  
 2 A. We just had a file with folders and the names  
 3 of the subdivisions, and we had -- I believe there was a  
 4 list of main line extension agreements that had been  
 5 generated already.  
 6 Q. Did you periodically look at these files to see  
 7 whether they were complete and whether you were ready to  
 8 go to a main extension agreement?  
 9 A. It depends. If we're talking at the point in  
 10 time where we're bypassing a wastewater treatment plant  
 11 and building a new one, I didn't look at these files for  
 12 two months.  
 13 I was the general superintendent. When a plant  
 14 is under construction, I was there. If there's an  
 15 emergency in the middle of the night, I was here.  
 16 Q. Then is it accurate to say that the operation  
 17 of the water and wastewater systems were your priority?  
 18 A. Absolutely.  
 19 Q. Any paperwork you did, as you were able to do  
 20 the paperwork?  
 21 A. With the development part of it, yes. My  
 22 A.D.E.Q. paperwork, my reporting, that was all  
 23 priority.  
 24 Q. But the developer line extension paperwork was  
 25 a lower priority for you?

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1 A. If I recall, Brian called me and asked me about  
 2 it. He said, "Where's my line extension agreement? I  
 3 never got it."  
 4 Q. Did you have a process in place for tracking  
 5 these developments and line extension agreements?  
 6 A. Not really; not a got one.  
 7 Q. So if Brian -- your testimony is that Brian  
 8 contacted you to ask about the main extension agreement  
 9 and that is what prompted you to get involved in this?  
 10 A. I'm sure I told him "I'll get it right to you."  
 11 I went to go get the stuff and found it wasn't there, so  
 12 I wrote him a letter and said, "Hey, this is what I  
 13 need."  
 14 Q. Did this happen with other developers?  
 15 A. Often, yes. We had to call developers and  
 16 request documents with cost breakdowns. I ran into a  
 17 glitch one time -- a few times, actually, where they were  
 18 sending us cost estimates. It was like, "No. We need  
 19 the actual cost numbers." There were a lot of  
 20 inquiries.  
 21 Q. How was it that you tracked and managed all of  
 22 this? It seems like it was a little bit haphazard in  
 23 terms of preparing these agreements.  
 24 What was it that -- when a developer  
 25 constructed infrastructure and submitted documentation to

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1 A. For me, it was, yes.  
 2 Q. Did you feel like, at the time, that you had  
 3 adequate staffing to handle the workload at the  
 4 company?  
 5 A. In which regard?  
 6 Q. Well, did you feel like you had enough help at  
 7 the utility company to be able to do everything that you  
 8 needed to do on a timely basis?  
 9 A. Yeah. We were sufficiently staffed. The  
 10 developmental part of it, looking back, I probably should  
 11 have never got involved with. I'm a water and wastewater  
 12 professional. I am not this guy. It was asked of me to  
 13 do this, and I gave it my best shot.  
 14 Q. So when Mr. Shapiro came along, you were more  
 15 than happy to turn this part of it over?  
 16 A. I was extremely relieved, yes.  
 17 Q. In fact, at that point in time, did he take all  
 18 of that over?  
 19 A. Yes.  
 20 Q. You were no longer involved -- at some point in  
 21 2006, you were no longer involved, although this letter  
 22 is dated October 8, 2006, correct?  
 23 A. Mm-hmm.  
 24 Q. And you left in December 2006?  
 25 A. December 15, yeah.

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1 Q. At least as of October 8th, you were still  
2 somewhat involved?

3 A. If I recall, this was the transitional period.  
4 Mr. Shapiro came on board, and I was just going, "Wait a  
5 minute. Let me shoot a letter out. I want to get all  
6 this stuff together before you give it to the guy," and I  
7 noticed we were missing this stuff, or maybe Brian called  
8 me, asking "Where's my extension agreement?" I don't  
9 recall.

10 I believe Brian called me and asked about where  
11 my extension agreement was, which prompted me to look.  
12 There were a lot of things going on at this time.

13 Q. When Mr. Householder called you, did he ever  
14 tell you that he had already executed a line extension  
15 agreement with Far West Water and Sewer?

16 A. No. I believe he called requesting one.

17 Q. He called and asked you to prepare one?

18 A. Yeah. I talked to him about it. "We do these  
19 main line extensions." He called me, and I said,  
20 "Whatever happened to these? I looked, and I'm missing  
21 this stuff." I wrote him a letter saying, "This is what  
22 I need from you."

23 Q. Did you get what you needed from him?

24 A. I believe, yeah, eventually I did.

25 Q. Did you prepare a main extension agreement?

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1 A. Wait a minute. Let me back up on that one.  
2 I have to say no, I didn't. I'm going off a  
3 two-year-old memory, but I would assume, because Jay  
4 Shapiro stepped in and -- looking at the October date,  
5 with me leaving in December, I may not have ever seen  
6 this stuff come across the table because we were very  
7 active at the Del Oro wastewater plant with Coriolis. I  
8 was out in the field a lot during this time.

9 Refreshing a two-year-old memory, I would say,  
10 for the record, no, I don't recall receiving any of the  
11 requested items, because of the timing of the letter.

12 Q. And you don't remember preparing a main  
13 extension agreement?

14 A. No. For this one, specifically, I can't say  
15 that I remember preparing the agreement.

16 Q. If you had prepared an agreement, would you  
17 have gone to the computer and pulled up your form and  
18 filled in the blanks?

19 A. Correct.

20 Q. And what about -- what would have been your  
21 expectation with regard to the capacity fees for water  
22 and sewer?

23 A. I have no idea.

24 Q. You didn't deal with that part of the --

25 A. No.

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1 Q. You would have prepared a main extension  
2 agreement, got it signed, and then you would have let  
3 Mr. Thomas deal with the capacity fee issue?

4 A. I believe by this time, Mr. Thomas was gone,  
5 and Paula had stepped in and taken very active control  
6 over the utility company.

7 Paula is very, very much into finance and  
8 numbers, very good at it, so she would have taken over  
9 this whole thing. That's where Mr. Shapiro would have  
10 gotten involved.

11 I made a lot of errors. I did. She pointed  
12 those errors out to me; "This is the way it's supposed to  
13 be."

14 Q. Ms. Capestro did?

15 A. Mm-hmm. Looking back now, I should have never  
16 got involved with main line extension agreements because  
17 they are a lot more complex than meets the eye.

18 Q. Okay. Did you receive any training? You said  
19 earlier that you received your training from  
20 Mr. Thomas?

21 A. Dusty just kind of gave me guidance. Looking  
22 back, Murphy Campbell, who was my predecessor, used to  
23 write the main line extension agreements. I'm 95 percent  
24 sure on that one. I never received a pass-down from  
25 Murphy. He was gone, so I stepped into an empty seat

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1 with no pass-down.

2 Q. The training you received from Mr. Thomas,  
3 would you describe that as formal or informal?

4 A. Very informal.

5 Q. And did you ever receive any training from any  
6 person at Far West Water and Sewer other than  
7 Mr. Thomas?

8 A. No.

9 Q. Did Ms. Capestro ever provide any training?

10 A. She gave me a lot of -- when she got involved  
11 in 2006 and really started digging deep, the deeper we  
12 dug, the more problems we were finding; and she offered  
13 me a lot of valuable advice and guidance, training.

14 The main line extension agreements, again, are  
15 a boilerplate. Looking back, I'm sure I just deleted  
16 "Murphy Campbell" and wrote my name. I carried on with  
17 what Murphy was doing.

18 Q. You said as you were digging deeper, you were  
19 finding more and more problems. What kind of problems  
20 were those?

21 A. Number one, a wastewater/water guy should not  
22 be dealing with main line extension agreements.

23 She was enlightening me on what this payback  
24 means and trying to give me a brief education on the  
25 whole approach to a main line extension agreement; why

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1 they exist, what they do, what they're based on.  
 2 It was way over my head. I am not a finance  
 3 guy. I appreciated her efforts to try to educate me on  
 4 it, but I am not a finance guy.  
 5 Q. Mr. Kaveney, in the fall of 2004, do you recall  
 6 a telephone conversation with Mr. Householder where you  
 7 told him that Far West Water and Sewer would provide  
 8 sewer service to Sierra Ridge but would not require the  
 9 payment of capacity fees?  
 10 A. I wouldn't have said that. I wouldn't have  
 11 that authority to say that.  
 12 Q. Do you recall any conversation with  
 13 Mr. Householder where you told him that Far West Water  
 14 and Sewer would not provide sewer service to his Sierra  
 15 Ridge development?  
 16 A. It was never a yes or no. I was working with  
 17 Brian, saying, "Well, we will later. This is what we're  
 18 doing. This is what we're gonna try to do. This is the  
 19 big plan. Alternatively, let's look at septic tanks."  
 20 We worked together a lot on this.  
 21 Q. Okay. Turn to tab 19, if you will. That's  
 22 marked as Exhibit 19 in your deposition.  
 23 These are a group of water main extension  
 24 agreements that were provided to us in connection with a  
 25 request we made to Far West Water and Sewer. I'm gonna

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1 talk to you about a few of these.  
 2 Let's start with the first water main extension  
 3 agreement. It is for a development known as Estrella at  
 4 Mesa Del Sol Unit 2.  
 5 A. Mm-hmm.  
 6 Q. Do you recognize this form?  
 7 A. Yes, I do.  
 8 Q. Is this the boilerplate form we've been talking  
 9 about today?  
 10 A. Yes, it is.  
 11 Q. And was this a form that existed on your  
 12 computer?  
 13 A. Yes.  
 14 Q. So when you prepared this form, would you type  
 15 the information in, or would you input it on the  
 16 computer?  
 17 A. I would input it on the computer. I would go  
 18 there and delete out "Estrella" and type in another  
 19 subdivision. The dates would change. Usually, where you  
 20 see underlines is where the data would change. Other  
 21 than that, it was pretty much boilerplate.  
 22 Q. The date of this agreement is  
 23 January 31, 2005?  
 24 A. Okay.  
 25 Q. Do you agree?

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1 A. Yeah.  
 2 Q. If you look about a third of the way down on  
 3 the page --  
 4 MR. CROCKETT: And for the record, we're  
 5 looking at KAV0036.  
 6 THE WITNESS: Mm-hmm.  
 7 Q. (BY MR. CROCKETT) It indicates an estimated  
 8 start date and an estimated completion date. Do you see  
 9 that?  
 10 A. Yes.  
 11 Q. What's the estimated completion date?  
 12 A. January of '05.  
 13 Q. And the date of the agreement is?  
 14 A. January 31st of '05.  
 15 Q. So you would assume from this that the  
 16 infrastructure was completed before you signed the main  
 17 extension agreement?  
 18 A. Yes.  
 19 Q. Now, under paragraph 2, about midway through  
 20 the paragraph, it indicates a refundable advance in aid  
 21 of construction of \$166,364. Do you see that?  
 22 A. Yes, I do.  
 23 Q. What does that money pay for?  
 24 A. I don't know. That number comes off the sheet  
 25 that I got from the engineer.

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1 Q. That was a bad question.  
 2 If you look at 2A, where it says, "Materials,"  
 3 it identifies some pipes, valves, fire hydrants, 126  
 4 services. Do you see that?  
 5 A. Mm-hmm.  
 6 Q. Is that what the developer constructed?  
 7 A. Yes.  
 8 Q. And the cost of all that, you would assume, was  
 9 166,364?  
 10 A. Yes.  
 11 Q. Do you know whether that 166,364 included any  
 12 capacity reservation dollars?  
 13 A. No. That was strictly the line items for all  
 14 this material. This was strictly materials cost.  
 15 Q. And that is -- that's the case for all of these  
 16 main extension agreements?  
 17 A. All of them that I wrote, yes.  
 18 Q. Water and sewer?  
 19 A. Mm-hmm.  
 20 Q. And under 2B, labor, it says "See attached cost  
 21 sheet." Do you see that?  
 22 A. Mm-hmm.  
 23 Q. My copy doesn't have anything attached. Do you  
 24 know, was there generally an attachment to these  
 25 documents?

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1 A. Yeah. The engineer would provide me with an  
 2 overall cost sheet. I ignored the labor and all that  
 3 other stuff. I just went strictly for the capital that  
 4 went in the ground. I pulled those items out and put  
 5 that amount down.  
 6 Q. Does this \$166,364 include labor cost?  
 7 A. No.  
 8 Q. It does not?  
 9 A. No. That's strictly all the capital that's in  
 10 the ground.  
 11 Q. So to the extent that there was another  
 12 \$100,000 in labor cost, that would not be subject to  
 13 refund under this agreement?  
 14 A. Right.  
 15 Q. And do you know -- do you know what the  
 16 authority is for excluding labor cost?  
 17 A. No, not at all.  
 18 Q. Why did you do it that way, as opposed to  
 19 including the labor cost?  
 20 A. Because I think I go off the basis that a  
 21 developer wants to develop a community and sell houses  
 22 and make money. He's gonna put an infrastructure that  
 23 will be ours to keep and maintain, the piping, the  
 24 valves, and the hydrants. But why should the utility  
 25 company pay his labor that's required to get his

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1 subdivision up and running?  
 2 Q. Are we talking about the labor in this case to  
 3 put that water infrastructure in the ground?  
 4 A. Right.  
 5 Q. Isn't the labor a part of the cost of putting  
 6 the infrastructure in?  
 7 A. Not for us. It doesn't benefit us for them to  
 8 put this in the ground. We're willing to pay them back  
 9 for the pipes and parts and pieces because it's gonna be  
 10 ours someday, but the water and sewer company has no  
 11 benefit.  
 12 All they're doing is putting more work and  
 13 liability in the ground for us to maintain at a future  
 14 date. When the developer is gone and we get a water main  
 15 break on Christmas morning, the developer is not there to  
 16 fix it. It's us.  
 17 I could not see paying the labor costs, no.  
 18 Q. Turn, if you would, to the next water main  
 19 extension agreement. It starts at KAV0040.  
 20 A. Okay.  
 21 Q. This agreement pertains to Foothills Mobile  
 22 Estates number 30?  
 23 A. Mm-hmm.  
 24 Q. What is the date of this agreement?  
 25 A. June 2004. June 30, 2004.

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1 Q. And when was the estimated completion date?  
 2 A. November 2003.  
 3 Q. So this agreement was signed a year or so after  
 4 the completion date; is that correct?  
 5 A. Mm-hmm.  
 6 Q. Under section 2, the refundable advance in aid  
 7 of construction is \$404,908. Do you see that?  
 8 A. Mm-hmm.  
 9 Q. And that, again, does not include any capacity  
 10 fee?  
 11 A. No capacity fee, no labor, strictly material.  
 12 Q. Would there have been an agreement that covered  
 13 the payment of capacity fees?  
 14 A. I didn't know of one that was in existence.  
 15 There needed to be one.  
 16 Q. You never saw one?  
 17 A. No.  
 18 Q. Do you know if there were any?  
 19 A. Not that I was aware of. I was of the  
 20 understanding that some developers had some agreement,  
 21 that they agreed to pay something, but that's just  
 22 hearsay.  
 23 Q. Is there any way for you to know -- if you  
 24 wanted to find out what the capacity fee that was paid  
 25 for Foothills Mobile Estates number 30, how would you

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1 find that out?  
 2 A. I'd go to our accounting department.  
 3 Q. And what would you ask them?  
 4 A. "Did H&S Developers write us a check for  
 5 capacity for FME 30?"  
 6 Q. Would you have asked Mr. Thomas that  
 7 question?  
 8 A. I wouldn't have asked anybody. To my  
 9 knowledge, it didn't exist.  
 10 Q. Weren't developers paying a capacity fee?  
 11 A. Not to my knowledge, no.  
 12 Q. Okay. But you indicated to Mr. Householder  
 13 that he needed to pay a capacity fee?  
 14 A. Brian asked me, "I want to build a subdivision.  
 15 What do you think it's gonna cost?"  
 16 I was promoting capacity fees and all that  
 17 stuff to my boss, saying, "We have to do something. We  
 18 have to quit putting all of our money out for these  
 19 developers to build for free."  
 20 He was in agreement with that concept. "If  
 21 he's wanting a future forecast, well, Dusty, what do you  
 22 think?" Dusty threw the numbers at me, based on  
 23 hopefully progressing into obtaining capacity fees.  
 24 Q. Was Mr. Householder the test case on a capacity  
 25 fee?

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1 A. He was the only case. He was the small  
2 developer guy. "Hi, bud. I'm a small guy. I want to do  
3 my first subdivision." I wanted to help him out. I went  
4 out of my way.

5 Q. I don't understand -- we have a whole bunch of  
6 main extension agreements in here for any number of  
7 subdivisions. Did those developers pay, to the water and  
8 wastewater company, a capacity fee?

9 A. I don't know.

10 Q. Back to the question, how would you find out  
11 the answer to that question?

12 A. I would have to go to Dusty and ask him or go  
13 to the accounting department. This is something way out  
14 of what I do for a living. I don't get involved with  
15 this.

16 Q. Okay. Now, this agreement we're looking at for  
17 Foothills Mobile Estates number 30, on the third page of  
18 that agreement, KAV0042, it shows a date approved at the  
19 Arizona Corporation Commission of January 14, 2005. Yet  
20 this agreement was dated June 30, 2004.

21 Why -- can you explain the delay in submitting  
22 this to the Commission?

23 A. The only thing I can think of is I wouldn't  
24 have had all the documents required to submit to the  
25 commission.

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1 Q. Do you know what documents you needed to have  
2 to submit to the commission?

3 A. I don't remember. As we've discussed earlier  
4 today, there was a check-off list. The capacity  
5 assurance, the disinfection results, the approval to  
6 construct, water adequacy reports. I'm not saying that  
7 is the case. I'm just saying that would make sense why  
8 the delay would have occurred.

9 Q. Okay. Mr. Kaveney, turn to the next water main  
10 extension agreement for Foothills Mobile Estates number  
11 31 a.k.a. the Ravines number 1. That starts on page  
12 KAV0043.

13 A. I'm there.

14 Q. Now, keep your finger there and then turn back  
15 to under tab 20, the document that starts at page  
16 KAV0094.

17 A. Okay.

18 Q. These are two agreements. One is a water main  
19 extension agreement for the Ravines number 1, and the  
20 other is a sewer main extension agreement for the Ravines  
21 number 1. Do both documents bear the same date?

22 A. Yes.

23 Q. What is the estimated start date under the  
24 water main extension agreement?

25 A. September of '03.

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1 Q. And what is the estimated start date under the  
2 sewer main extension agreement?

3 A. July of '02.

4 Q. So more than a year earlier?

5 A. Mm-hmm.

6 Q. And what is the estimated completion date for  
7 the water main agreement?

8 A. January '04.

9 Q. And what about the estimated completion date  
10 for the sewer agreement?

11 A. November '03.

12 Q. Wouldn't the water and sewer infrastructure  
13 have gone in at approximately the same time?

14 A. Not necessarily, especially if you get into  
15 your bigger subdivisions. It takes a lot to put in a  
16 gravity sewer system. You have to have the right slope.  
17 There's manholes to install. There's a lot of grading  
18 involved.

19 Pressurized water lines are different. My  
20 understanding of it is you throw in your sewer systems  
21 first and follow up and start putting your water systems  
22 behind.

23 Q. Given that these dates were a couple of years  
24 before the date of the main extension agreement, the main  
25 extension agreement was signed in January of '05. This

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1 work was estimated to be completed either in November  
2 of '03 or January of '04.

3 Is this one of those agreements that you found  
4 out after the fact had not been prepared?

5 A. I don't recall that one. No, probably not.

6 Q. In going through these agreements, there's a  
7 number of them that have a January 25th, 2005, date. I  
8 think you testified earlier that that's about the time  
9 you think you learned that a bunch of agreements had not  
10 been submitted?

11 A. Right.

12 Q. Is it likely that this one would fall into that  
13 group of agreements?

14 A. Could. That one seemed like a relatively  
15 new -- when I first got here in '03, FME 30 was for sale.  
16 For instance -- yeah, it almost seems like in January  
17 of '05, when we discovered that all these were missing,  
18 not yet submitted, I recall bringing everything up to  
19 date.

20 Q. So that must have taken you some time to  
21 prepare those agreements?

22 A. Hours and hours and hours.

23 Q. Was it multiple days --

24 A. Yes.

25 Q. -- that you worked on these agreements?

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1 A. Yes. You'll notice I have never looked at it,  
2 but if you go back on the history of my extension  
3 agreement generation, you'll see it come in waves because  
4 I would take time, sit down, and hammer a bunch out, get  
5 everything caught up, and off into the field I would go.

6 Then they would stack up, stack up, pile up,  
7 and I would come in and try to get them all done and keep  
8 caught up.

9 Q. Turn, if you would, under tab 19 to the  
10 agreement for Mountain View Unit Number 2 that starts at  
11 page KAV0047. Do you see that one?

12 A. Yeah.

13 Q. Turn to the third page of that, KAV0049. That  
14 document is signed by Dusty Thomas; is that correct?

15 A. Yes.

16 Q. Do you know why he would have signed this  
17 agreement and not you?

18 A. This was back in '04?

19 Q. June of 2004.

20 A. One of two things: Either the developer needed  
21 this A.S.A.P. and Dusty says, "Okay. Here you go"; or  
22 this was around the transitional time where Dusty started  
23 passing this stuff off to me.

24 Q. Now, do you remember, Mr. Kaveney -- with  
25 regard to Yuma East Estates, do you recall whether that

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1 was one of the developments that had to be caught up with  
2 main extension agreements?

3 A. I'm sure it was. There was quite a bit behind.

4 Q. Now, with respect to tab 20, which is  
5 Exhibit 20, these are a series of sewer main extension  
6 agreements. Does the same discussion apply to these  
7 agreements?

8 For example, let's look at the second agreement  
9 in the bunch, which is Estrella at Mesa Del Sol Unit 1.  
10 It starts at KAV0076.

11 Under section 2 of that agreement, it provides  
12 a refundable advance in the amount of 223,527.

13 A. Mm-hmm.

14 Q. Again, that would not include a sewer capacity  
15 fee?

16 A. No.

17 Q. And it would not have included any labor  
18 costs?

19 A. No. If you wanted to get an auditor in here  
20 and pull up Estrella at Mesa Del Sol Unit 1 and have the  
21 cost sheets pulled out, if you went and took out the  
22 8-inch SDR35 and take that cost, and the 12 SDR35 and  
23 that cost, 21 manholes, and the services, which were the  
24 4-inch laterals, that tally would add up to this number  
25 right here. That's how I came up with the number.

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1 Q. Turn, if you would, to page KAV0082. That's a  
2 sewer main extension agreement dated January 31, 2005,  
3 for Foothills Mobile Estates, Number 25?

4 A. Mm-hmm.

5 Q. And again, it shows a completion date of  
6 January 1999 or six years prior to the date the agreement  
7 was signed. This would be an example of one of the  
8 agreements you did after the fact?

9 A. Sewer had its own little twist to it. Our  
10 senior bean counters, with all respect, came to us and  
11 said, "Why aren't you guys paying back for sewer?"

12 I can only assume that it came from the bean  
13 counters. There's tax benefits or something. We do  
14 waterline extension agreements. We always have. We  
15 never did them for the sewer agreements. I think if you  
16 get it for free, you're good.

17 According to them, you want to pay money out.  
18 It makes no sense to me. They requested it. We went  
19 back and calculated all the material that went in the  
20 ground for the sewer and generate all the extension  
21 agreements to start paying people back.

22 Q. So that would explain, for example, why the  
23 agreement for Foothills Mobile Estates 25, 26, 27, 28,  
24 29, 30, 31 all came in with a date of January 31, 2005?

25 A. Yeah.

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1 Q. And on something like this, where the  
2 infrastructure had been built years earlier, you wouldn't  
3 be going back and asking these folks to come up with a  
4 capacity fee; is that correct?

5 A. No. Absolutely not.

6 MR. CROCKETT: Let me take a five-minute break,  
7 if we can. Let me see where I'm at. It's 3:00. I think  
8 I'm about wrapped up.

9 MR. CAPESTRO: If you need to take any more  
10 time, I would have to get something e-mailed off, if it  
11 looks like you're gonna take a while.

12 MR. CROCKETT: Let me go chat with Brian here  
13 for a minute.

14 (There was a short break taken at 3:03 p.m.  
15 until 3:08 p.m.)

16 MR. CROCKETT: Back on the record.

17 Q. (BY MR. CROCKETT) Mr. Kaveney, what  
18 infrastructure existed around the Sierra Ridge  
19 development at the time Mr. Householder requested service  
20 from the company?

21 A. We had a sewer main that terminated right into  
22 12E.

23 Q. How close was that sewer main to his  
24 development?

25 A. Right out in the middle of the street, right

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1 off his development.  
 2 Q. How many feet would you guess?  
 3 A. 20 feet.  
 4 Q. So all he needed to do to get to the Palm  
 5 Shadows plant was to connect to that sewer lateral?  
 6 A. 20 feet from the sewer main into his  
 7 subdivision and whatever he needed do.  
 8 Q. What about water?  
 9 A. There was -- I believe it was a 12-inch water  
 10 main running down South Frontage Road.  
 11 Q. And how close to that -- to his development was  
 12 that water main?  
 13 A. That would have been -- if I remember his plat  
 14 right, it would have been in the utility easement of his  
 15 commercial section, so it would have been already on his  
 16 property.  
 17 Q. So to tie into your water system, he only  
 18 needed to essentially connect to a pipe that was already  
 19 on his property?  
 20 A. Mm-hmm.  
 21 Q. Did you deal with Jay Shapiro when you were at  
 22 Far West Water and Sewer?  
 23 A. No.  
 24 Q. Did you ever have any discussions with him?  
 25 A. Yes, but it was relative to the A.C.C.

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1 hearing.  
 2 Q. Did you have discussions with Mr. Shapiro  
 3 regarding Sierra Ridge?  
 4 A. No.  
 5 Q. Are you sure about that?  
 6 A. Positive.  
 7 Q. Andy asked you this, I believe, earlier, but  
 8 you were never employed by any affiliate of Far West  
 9 Water -- any affiliate of Far West Water and Sewer?  
 10 A. No, I was not.  
 11 Q. Have you ever been involved in any litigation  
 12 with any affiliate of Far West Water and Sewer Company?  
 13 A. Could you ask that again.  
 14 Q. Yeah.  
 15 MR. CAPESTRO: How is that relevant to this  
 16 case?  
 17 MR. CROCKETT: I'm trying to understand if he's  
 18 ever had a lawsuit --  
 19 Q. (BY MR. CROCKETT) -- where you were a party  
 20 and either H&S Developers or the water company was a  
 21 party.  
 22 MR. CAPESTRO: Where he was a party?  
 23 MR. CROCKETT: Where he was a litigant.  
 24 Q. (BY MR. CROCKETT) Have you ever sued Far West  
 25 Water and Sewer or H&S Developers, or have either of

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1 those entities ever sued you?  
 2 A. Oh. No.  
 3 Q. Did you have any performance reviews while you  
 4 were at Far West Water and Sewer?  
 5 A. No. I just thought about that. No.  
 6 Q. Were you ever reprimanded while you were at  
 7 Far West Water and Sewer in a formal way, other than  
 8 Dusty Thomas yelling at you for something?  
 9 A. Yeah. No.  
 10 Q. Was there ever a time when you were instructed  
 11 by anyone at Far West Water and Sewer to not communicate  
 12 with Mr. Householder?  
 13 A. I never received instruction not to communicate  
 14 with anybody. When Mr. Shapiro took over the line  
 15 extension agreements, that was that. Again, shortly  
 16 thereafter, we had a lot of stuff going on. I wasn't  
 17 even in the circuit to communicate with much of  
 18 anybody.  
 19 Q. Lastly, let's go to tab 18, Mr. Kaveney,  
 20 Exhibit 18 to your deposition, which is the October 8,  
 21 2000 (sic), letter you wrote to Mr. Householder. Is that  
 22 your signature at the bottom of the letter?  
 23 A. Yes.  
 24 MR. CAPESTRO: October what?  
 25 MR. CROCKETT: 2006.

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1 Q. (BY MR. CROCKETT) Is that your signature at  
 2 the bottom of the letter?  
 3 A. Yes, it is.  
 4 Q. Are you absolutely certain about that?  
 5 A. Yes, it is.  
 6 Q. Let's go to tab 20, page 173. It's KAV0173.  
 7 That is the second page of a sewer main extension  
 8 agreement for Yuma Meadows Unit 4. That also bears your  
 9 signature on page KAV0173. Do you see that?  
 10 A. Yes.  
 11 Q. Is that your signature?  
 12 A. Yes, it is.  
 13 Q. Any doubt in your mind about that?  
 14 A. None whatsoever.  
 15 MR. CROCKETT: I think we're finished. I  
 16 appreciate your patience today.  
 17 MR. CAPESTRO: How do you want to take care of  
 18 the original deposition for him to review it since he's  
 19 in El Cajon?  
 20 MR. CROCKETT: Let's go off the record.  
 21 (Informal discussion off the record.)  
 22 Q. (BY MR. CROCKETT) One final question, and then  
 23 we're really done.  
 24 I can't remember what you told me, Mr. Kaveney,  
 25 but when do you recall that Jay Shapiro took over dealing

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1 with the main extension agreements?  
 2 A. I would assume around the October '06 time,  
 3 based on that letter, the date of that letter.  
 4 Q. Mr. Shapiro wrote Mr. Kaveney a letter dated  
 5 May 10th -- I'm sorry -- Mr. Householder, a letter dated  
 6 May 10th, 2006. Could it have been as early as May that  
 7 he took over?  
 8 A. Absolutely. Again, I dealt only with what I  
 9 dealt with. I don't know what letter he wrote  
 10 Mr. Householder. If it had something to do with a main  
 11 line agreement, I had nothing to do with that. I don't  
 12 know.  
 13 MR. CROCKETT: Thank you for your patience and  
 14 for your responsiveness to my questions today.  
 15 (The deposition concluded at 3:18 p.m.)  
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BORT COURT REPORTING SERVICE

## DEPONENT CERTIFICATE

1  
 2 I, Mark Kaveney, hereby certify that I have read the  
 3 foregoing deposition and that said deposition is true and  
 4 correct with the exception of the following corrections:  
 5 Page Line Correction  
 6  
 7  
 8  
 9  
 10  
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 12  
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 14  
 15  
 16  
 17  
 18


19 DATE MARK KAVENEY  
 20 Subscribed and sworn before me this  
 21 day of 2008.  
 22  
 23  
 24  
 25

Notary Public

BORT COURT REPORTING SERVICE

## CERTIFICATE OF REPORTER

1  
 2 State of Arizona)  
 3 County of Mohave)  
 4 I, Amy S. Richardson, a Certified Reporter in the  
 5 States of Arizona and California, do hereby certify:  
 6 That prior to being examined, the witness named in  
 7 the foregoing deposition was duly sworn by me to testify  
 8 to the truth, the whole truth, and nothing but the truth.  
 9 That the said deposition was reported by me at the  
 10 time and place herein named and was thereafter reduced to  
 11 this transcript under my direction.  
 12 That the foregoing is a true and correct transcript  
 13 of all proceedings had upon the taking of said  
 14 deposition, all done to the best of my skill and ability.  
 15 I further certify that I am not interested in the  
 16 events of this action.  
 17 Dated this 25th day of November 2008.  
 18 Pursuant to request, notification was provided that  
 19 the deposition is available for review and signing.  
 20  
 21  
 22  
 23  
 24  
 25

  
 Amy S. Richardson, RPR, CR  
 Arizona Certified Reporter No. 50329  
 California Certified Reporter No. 11647

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